

“JUSTICE QUARANTINED: A PANDEMIC PURVIEW OF RIGHT TO ACCESS TO JUSTICE IN INDIA”

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Abstract

The COVID² waves had disturbed Indian Justice Delivery System on many fronts. The danger is still flying over the head. Many judges and judicial officers had been infected that led to hospitalization, critical illness and death row. Advocates, litigants, supporting staff of the court, accused persons and police personnel had been facing even worse situation. Access to justice is a recognized fundamental right in the Constitution. The Supreme Court declared that only “extremely urgent” cases could be E-filed and heard online after the declaration of lockdown from 24th March, 2020. The Supreme Court has already in a judgment stressed on of uploading FIRs on police or State Government websites. Which if followed might be made the online court hearing far more convenient during the crises of that pandemic. The scope is still awaited. It was like staying at the base camp for winning the hill top. We never know what kind of similar situation may happen in near future. Another view is virtual hearing cannot be a substitute for open court hearing is also waiving in the sky of justice. Hon’ble Chief Justice D.Y. Chandrachud opined that open court is the spine of Indian Legal System. The Supreme Court and High Courts certainly are enjoying infrastructural advancement and techno savvy staff. But there are six hundred and seventy two district level courts in entire country. Some of these courts are struggling for smooth internet connectivity. Infrastructure and equipped staff are some common problems at district level. Advocates are often seen struggling with the technical glitches and losing of connection in between the argument before the court. Another aspect of concern is privacy of confidential documents by the third party. So COVID 19 ponders several questions to right to access to justice. The research paper would deal the questions arising out of it and would suggest some suggestions in this regard.

Keyword: Indian Legal System, COVID -19, E-filing, Online Hearing, People Centric Judicial System.

INTRODUCTION:

“We can enact the best privileges and protections into law-- but we cannot make them real unless people have access to counsel and a fair day in court³”

Deputy White House Counsel

Danielle Conley

It has been a pathetic situation since the starting of the COVID-19 pandemic across the orb. It is having enormous bad impacts upon all walks of life. But administration of justice is a key factor for keeping the society peaceful and in proper order. Access to justice has been established as fundamental right and it is guaranteed in the Constitution not only in India but in every State that is interested in constitutionalism, the reservoir of core attributes of democratic setup⁴. Justice is not only distributed by the courts of law, it is also given by the Government through the various agencies and tribunals and forums. The Public Distribution System played a vital role for the poor and deprived person. Even some NGOs came forward

with positive stance for helping out those people who were keen to return to their native places. In USA a Roundtable Report on “Access to Justice in the Age of COVID-19” was surfaced. It is a detailed document of challenges and their solutions and of course about the future safety measures. England and Wales issued protocols regarding remote hearing taking the view of highly infectious viral disease that regulate video conferencing, live feed, to upgrade the techno-infra in the courts, if physical hearing is necessary only a concise bundle of documents those are highly relevant to the hearing is allowed and maintaining high quality of hygiene within the court premises. Article 8 of UDHR⁵ also underlines that access of justice is fundamental right⁶. It was the time while Spanish flu outbreak broke across the world in 1918 which compelled to postpone the court proceeding for over a month in England and some other parts of the world. Indian Judicial System is having heavy burden that was massively overburdened during the pandemic. Though our nation was trying for e- filing of cases and was working over digitization of legal system but ratio of judges over the population is already poor and far behind as it was suggested by the Law Commission⁷. Existing number is 20 judges per 1 million that is very short to suggested 50 per 1 million people that was recommended by the Law Commission. Remand cases in District Courts and only urgent cases in the Supreme Court which temporarily narrowed down the access of justice to very few people. If e- courts would have already been operative that situation could be avoided up to some extent⁸. Even today with 18313 new cases in India COVID-19 cases surge to 4, 39, 38,764 (Roughly 4.4 Crore). It is a huge number which would have been adversely impacted devoid of accessibility of justice. 526110 deaths have been occurred according to data provided by the concerned ministry⁹. Raising danger of Monkeypox apart from COVID -19 is standing spreading its mouth. We should be future ready for the sake of this fundamental right of access to justice and embracing new technologies like 5G Network and Artificial Intelligence despite some shortcomings thereof so that we can combat it in our vigor for the betterment of our people.

LITERATURE REVIEW:

Access to Justice (Book), Nisar Ahmad Bhat, Notion Press, 1st Edn. 27, Dec-2021, pp. 126.

This book is focused on Access to justice in India and contained every sphere of the access of justice. Relevant provisions from connecting laws whether it may be from the Constitution of India, the Cr.P.C¹⁰. the C.P.C¹¹. Or the Legal services Authority Act have been discussed well.

COVID-19: Impact, Challenges and Implications in India (Edited Book), Published in 2020, Vandana Publishers, Lucknow, pp. 453.

The book covers various spheres on which the pandemic had affected. It is divided into 12 sections like Education, Indian Economy, Social Economic Impact etc that give a deep sense of understanding that how the different walks of life got entangled. Justice is not what is given in the courtroom only. It is notion which is provided by act of government and by general people while discharging their duties. When the government assured the law and order or provides daily essential on a subsidized rate to the poor, start vaccination drive, gives gas connection to deprived class it is also justice. Our constitution recognizes three types of justice Social, Political and Economic that cannot be given by the courts only¹².

Law Commission on Scarcity of Judicial Manpower¹³

The Law Commission raised a question in its report that why the situation of lacking of manpower in judiciary has not been addressed and even rose before. The Commission gave a table of estimated budget and compared it with the strength of the existing situation. Though the picture has been changed slightly but as the commission raised the question that relatively smaller country like Hungary had 77 judges in the Supreme Court while India were having only 25 at that time, now 31 judges the number judges and gap between two countries even gets harder because of our increasing population¹⁴.

“Unlocking Justice in the Lockdown”, A Comment by Professor G.S. Bajpai¹⁵ and Ankit Kaushik, published in The Hindu Newspaper on April 29, 2020, Delhi Edition.

This article was based on complicated situation arising out the pandemic that should be resolved by the courts but access to courts was limited because only urgent matters were then taken up and in lower courts remands and bail matters were entertained. There was no clear criterion given by the court that which matter was urgent because it differed from case to case. Though, any constitutional challenge always demands access to court and the advocate. The non-inclusion of both in the State’s list of permitted activities clearly refuses of such access. Policing was being done at the peak of COVID rise but access was limited which was a threatening situation.

Objectives of Study:

- To analyse access to justice is narrowed down or not due to COVID-19 pandemic.
- What are the repercussions of pandemic on Bench, Bar and other parties of justice system?
- What measures should be taken to improve opportunity of access to justice?
- Finding out some phenomenal way out in future to combat the unwanted pandemic like conditions fettering access to justice.

Hypothesis:

- E-Courts will augment access to justice.
- Judicial manpower would be increased many fold in near future to ensure justice in time to the needy people.

Problem Statement:

Law is an organic part of society. When some unprecedented situation arises it should compete with it. If it is not competing with it the lacuna should be treated without delay. Access of justice is the backbone of a law abiding society. Its deterrence will surely create dissatisfaction and hopelessness and it would be against the guiding principles of the constitution. By this pandemic we should come up with more robust and accessible judicial system so that we shall be future ready.

METHODOLOGY:

The doctrinal and non-doctrinal both approaches are adopted in this research paper. The researcher visited District Court, Meerut and met and conversed with advocates, litigants, police personnel and the judges/magistrates. Saw the accused persons presenting through video conference. Read literature relating to the research topic, a few are mentioned above as review of literature. Gone through official websites of the Supreme Court and High Courts and carefully observed the orders and notifications, directions given by these courts. Local and national/International newspapers offline and online that have covered relevant news have been taken in consideration.

Impact on Access to Justice during COVID-19 Pandemic:

Ours is a country of huge population with economic, educational, social and habitation diversity. Honourable Chief Justice of India, Shri N. V, Rmana in a recent NALSA programme rightly observed that Indian Constitution is conceptualized for social, economic and political justice. He frankly admitted the fact that only a small fraction of our population has access to justice distribution system¹⁶. He underlined that access to justice is a tool for social salvation. He further said, “Most of the people are aggrieved in silence, there is shortage of awareness and means. Participation is impossible without social salvation.¹⁷” Our constitution and other laws are well written but implementation and infrastructure should be met with¹⁸. The difference between theory and practical should be removed¹⁹. The district level judiciary which is first interaction place and foundation of justice distributive system should be made more capable in all aspects. NLSA and other similar authorities are working for giving legal aid to 70% of our population and makes it biggest legal aid provider in the world. No doubt our government, judges and advocates should be praiseworthy for this mammoth task but the question arises that after the long 75 years after independence while we are celebrating Azadi ka Amrit Mahotsav our nearly two third population is not self-reliant of access to justice. The Chief Justice himself has accepted that National Legal Services Authority²⁰ (NALSA) is helping ninety percent of litigants. That explicitly points out that only ten percent of litigants are capable of taking justice in the normal course of Justice Distribution System in India. This fact indicates about the shattering condition during COVID -19 pandemic of access to justice²¹. The Jitsi²² app was being used during COVID-19 striking days for urgent hearing and remand. Even scenes like the accused and his advocate standing somewhere in the court premises and the concerned judicial officer sitting in his/her chamber or on the dais while online hearing on urgent matters and remands were very common. Though it shows firm determination of the bench and bar for the cause of justice but many advocates and judicial officers and their supporting staff got infected due to lack of proper sanitary and infrastructural arrangements. Through Video Conferencing (VC) remand of accused under judicial custody for which a separate well equipped room with technical assistance for judicial officers in the court premises and for jail authorities in jail premises is used for this purpose even in lesser COVID 19 threatened days as in current times. Promoting the need of ADR (Alternative Dispute Resolution), counselling for not to go in litigation for frivolous issues in schools and colleges, a fair mediation centre with efficient officers and infrastructure, people centric judicial system,

use of Artificial Intelligence in file management of the cases, promoting the time bound justice by hiring good advocates on the panel of governments for speedy and fair justice for general public at affordable fee, smart investigation agency apart from police even for general cases, lessening the unnecessary pressure of deciding cases on judicial officers, transparency in legal proceedings and police investigation would make the whole judicial system far better not only the access to justice but assured justice is the need of the hour that shall make the society well in order and uphold peace and happiness amongst the people. In higher judiciary the Full Bench of the Supreme Court of India invoking Article 142 of the Constitution of India had issued guidelines to combat the pandemic²³:

- High Courts took all actions to curb the threat of the spread of the version in its premises shall be deemed necessary and lawfu²⁴.
- Video conferencing for functioning of the judicial system in tough times²⁵.
- Committed phone lines and portal for the parties through their advocates²⁶.
- Litigants who did not have access to the facilities of online procedures should be provided for the same²⁷.
- Legal protection was provided to the litigants that without their consent no evidence shall be recorded²⁸.
- During pandemic the burden was increased on already over burdened judiciary²⁹.
- The Supreme Court observed that justice cannot be spoon fed.

The pandemic created challenges across the globe. But developed countries of lesser population and more facilities did well in access to justice. United Nations Office on Drugs and Crime issued guidelines for administration of justice and access thereto³⁰. UN stressed upon access to justice under COVID -19 conditions. So it was and is an international law obligation to insure the access to justice to the people of India in tough situation and be ready for unanticipated problems that may come across the way in future.

CONCLUSION & SUGGESTIONS AFFECTIVE JUDICIAL ADMINISTRATION:

Every day aggrieved parties are demonstrating their agony and showing suicidal inclination before the S.S.P's./Police Commissioner's/ D.M's office/ residence at almost every District Headquarters in the country. Even before the Supreme Court of India in spite of observing care and caution an aggrieved party tried to burn himself. Though it cannot be promoted in any sense but it indicates towards lowering of right of access to justice. The procedural technicalities should be rattled down. Social, economic and political justices should be incorporated through policies and schemes to the society by the concerned government as per their constitutional obligations and rights of making law distributed in the Seventh Schedule. Justice giving in the courtroom should be the last resort. As far as the objectives of the research work are concerned, the first objective that whether or not the access of justice was narrowed down during the grave rise of pandemic, a Civil Judge (Senior Division) of Meerut Court gave

his insight on this by saying that the situation was very difficult, judicial officers, supporting staff, advocates and the litigants were dying due to COVID-19 and in those conditions this fundamental right of access to justice was badly affected. The second objective leads to that the judicial officers were prone to get infected due to large number of litigants and poor infrastructural amenities. Advocates were fighting at two fronts scarcity of cases was leading to paucity of fee and apprehension of getting infected bothering their minds. Litigants seeking reliefs were drowning down in despair of uncertain delays in court hearings. The third objective intrigues into measures for access to justice, as the research reveals that the recommendations of law commission should have been incorporated³¹. The Judicial System should be made people centric. ADR should be implemented. In mediation and conciliation help of legal professions including law teachers/researchers should be taken. NGOs can also do better in this regard. In future digital literacy should be increased and digitally educated personnel should be hired for helping the court and the litigants. Both the hypotheses are found positive e-courts and judicial manpower shall augment the access of justice.

Future Scope of Study:

“In a developing country like ours, a very small section of the citizens can afford to knock on the doors of the court of justice. From lower courts to the Supreme Court, it becomes increasingly difficult for an average citizen to seek redressal of grievances. Pro bono services by the individuals and institutions and initiatives taken by the Supreme Court can take the form of a movement or the form of a better institutionalised mechanism³².” So there is wider scope to study this problem and by introducing multifarious suggestions, application of thoughts and providing affordable justice to the all the people in need. Making the judicial system ready for unprecedented situation like a pandemic should also needs a futuristic approach.

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