



## EFFECT OF COVID-19 ON THE JUSTICE DELIVERY SYSTEM: NOW & FUTURE

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### ABSTRACT

*“Unpredictable”, this can be the most unsurpassed word which can be used for the current situation and the scenario. We could have never imagined of such situation which will bring everything at halt from a person’s job to the world Economy, everything is been affected at*

*large. The WHO in its report declared this as the pandemic, which has affected every sector at large, and so the judicial system is not an exception to such a situation. The quantity of pending cases here in India is a known fact, and now the present scenario has put this sector into dilemma with respect to its own laws and legislations. When it comes to the Judiciary we actually have lot of things to converse about, like what will happen to the remote hearings, how will the grievances be addressed further? Although taking the present scenario into consideration the Court have come up with various notifications, regarding the functioning of the court, but the important thing which need to be taken into account is once again the proper implementation which not only includes the court’s proceedings but also have additional regulations with it. This article is basically going to focus on all theses aspects, which will eventually include both the pre and post Covid situation of Indian Judiciary system.*

**KEYWORDS:** Covid-19, Judiciary, Rules, Limitation Act.

### I. INTRODUCTION

We follow a common law system, where the role of Judiciary lies in the fact to interpret the statutes and apply the law accordingly. This sounds very undemanding but actually it’s more

complicated when it comes to the application. The Judiciary needs to apply relevant law on the relevant fact, which can further administer the whole process. Initially the Judicial system comprises of many other members to administer the justice but currently our Indian Judiciary system runs in accordance to the provisions stated in our Indian Constitution which gives a totally managed system of appointments of Judges from the District Court to the Supreme Court along with their power and functions. Furthermore, we have The Ministry of Law and Justice which is responsible for solving all the different kinds of issues which arises at the Union level, which eventually helps in the proper functioning of the Judiciary. It is stated that there is a direct nexus between the Indian Judiciary with our Constitution, because our Constitution empowers them to function but this do not allow the courts to emprise unlimited power as there are many doctrines which controls the same. Some major provisions which can be taken into consideration can be the Part V, Part VI of the Constitution which basically deals with the appointments to the removal, role and functions of the Judges in the various courts.

Article 50<sup>[1]</sup> also encompasses the Independence of the Judiciary system, which can further be interpreted in a way that there will be arise no jostle for the Judiciary in their proper functioning. Judiciary is considered as a guardian of all our rights be it Fundamental Rights or Directive Principle of State Policy. It is considered to render all our conflict of interests, and therefore it is mandatory for the Judiciary to stay away from any kind of pressure in order to impart fair and rational decisions.<sup>[2]</sup>

No matter so much of Supremacy is provided to our Indian Judiciary, but still there are many situations where we fail to understand its working, which henceforth leaves us to so many questions unanswered. In this article we will try and focus on the issues where the role of judiciary is into conflict along with the use of technology in this system, which can further provide us with a roadmap of present scenario.

## **II. Role of Judiciary in Delivering Justice**

As it is rightly stated with great power comes great responsibility. This saying is eventually the most appropriate phrase which can be interlinked when we speak about the Justice Delivery system in India. Undoubtedly our Judiciary has prearranged some remarkable decisions in various aspects of societal development and progress but this conviction will remain stand still only if the role of Judiciary in delivering justice is well-timed. We also have a very famous saying “Justice delayed is Justice Denied”, this can be considered as one

of the prominent issue to be discussed. There can be numerous reasons to substantiate this view point, right from the trifling issues arose in the proceedings to the unavailability legal representatives of the same. Now this comes under the purview of “pending case”, which takes us to our second issue which is again questioning our judicial system.

“Pending Cases”, do we really have a meaningful meaning of this word! The answer lies within the word itself, and i.e. is, the word is still in anticipation of its definition. A matter related to a challan which has taken place yesterday to a matter of serious nature (Rape or murder), happened 10 years back, all comes under the purview of pending cases. The only detail which we have related to the same is the surveys or data collected with respect to these pending matters in various courts of the Indian Judiciary system.

The next issue which can be looked forth is the “appointment procedures”, it is at times stated that we have pending matters because of the lack of judges; in spite of our grundnorm stating all the procedures clearly we still do not have transparency in this process. The centre as well as the state chooses to remain silent in this regard. Last but not the least; we can also confer the “comfort zone”, which is a remarkable question to converse on. We have so many new tools developed but our judicial system fails to come out from their comfort zone to adapt theses new outlooks. Like for instance, we have a concept of “Hot- Tubbing” an Australians Judicial tool used for examining the Expert witness, the statics shows till now only Delhi high Court was the one who adapted this tool in one of their Intellectual Property Related matter and rest are unaware of the same. In the similar context we can also visualize the fact that our Judiciary is apprehensive when it comes to the use of technology, virtual courts etc.

All these factors, in the recent past have actually lead to the deprival of faith by the people on our judicial system, which is now quite evident.

### **III. Impact of technology on Judicial System**

“Technology” is one word which is now extensively used in all aspects of life and in all the possible sectors. We can call it as a type of information reformation which took place everywhere. Judiciary is no less, however when we come to the Indian scenario, once again we lack towards the implications.

Issues such as delay in hearing, preparing cause list, data collection, all these can be done with the help of technology. In various parts of India, many courts have adapted the same but

there is no necessary check to its usage. And rightly stated by Austin, we need a sanction to follow orders. However we cannot question or raise issues on the framing of the legislations on the same as we have the development of E- Justice since 1990, where we can trace the development of Mission Mode Projects which actually laid the foundation of computerization of all the courts in India, further we also have the projects on E- Courts, which eventually tell the status of all the pending cases. National Information Centre (NIC) was one such organization which actually divided the court into various zones and was monitoring it works, which was succeeded up to some extent; however, there was still lack of analysis done in this regard.

If we take into consideration today's scenario technology is something if worn properly can actually help the Judicial System to come back to its toes properly. The effect of Covid-19 has affected all the sectors at large, it's impossible to start our life in the same pattern as were few months back, eventually in the coming time. In this very situation what can actually help judiciary is to strengthen their technological skills. However, the Supreme Court in this regard has given certain guidelines which can actually help the courts to combat the present situations and which can eventually reduce the burden of the pending cases.

There is one more aspect of the Judicial system i.e. the ADR (Alternative Dispute Resolution) which includes Arbitration, Mediation, Negotiation, Conciliation this is a mere process of out of court settlement which in recent times have gained lot of acknowledgment especially in the commercial related disputes. ODR (Online Dispute Resolution) is on facet which also a technologically enhancement used to resolve the pending matters in these outlooks. Therefore, the above discussion can help us to realize the common stated fact, that technological advancement is the need for the hour especially in the judicial sector to bring it at par.

#### **IV. Efforts Made to upgrade technology**

More often than not when we hear the term 'justice delayed' it actually goes on to mean that justice has been denied. The breaking down of justice TS Thakur in front of national TV brought a lot of attention to the no. of pending cases piling up in the judicial courts. The overworked 43<sup>rd</sup> chief justice of India said that unless new ways or ideas come up, the situation will not get any better. Over the past few decades with the innovation in technology, it has tried to dominate on almost each and every aspect of our lives some for better or some for worse. Judiciary too has always tried to upgrade its system, be it coming up of new

systems in filing in lower courts or getting computer-based filing in the Apex Court. Experience shows that advancement in the field of technology can assist in improving reforms of the institution reforms and increasing their impacts. If used efficiently it helps in delivering justice speedily. This section of the paper will talk about first as to what the situation right now is and secondly what are the possibilities to enhance it the near future.

Since 1990's the govt has tried to reform the judiciary and the work is still continuing although the most recent work is that of e-courts. The National Informatics Centre (NIC), started the computerization of India's courts with the apex court of India. A court information system also known as COURTIS, which was designed under this project for the first time made minute activities that are vital to the court's functioning online in nature such as online filing, online generation of the case list, coming up of order sheet online and such that. This step continued till the year 2003 after which it came to a halt. Among the many reasons lack of co-operation and mis-management of funds became the prime reasons for its failure. In the present case scenario; In another attempt and the most recent one till date, a committee was set up in 2004 called e-courts committee with a vision to transform with the purpose of transforming the courts by the use of information and technology. With the vision it had it kept on going forward and basically worked in a 3 phase plan. The system of e court in the plan did not just entail the online proceedings but the whole system of judiciary right from online cause list to online filings.

### **Phase I**

With all the lessons learned in the past, this phase started out in 2004 with an aim to digitize all that wasn't done in the 1997. This phase aimed for computerization of all the levels of courts, right from the lower level to the Supreme Court. It aimed to provide computers and laptops to some 16000 judicial staff. Computer service center and judicial service centers were also set up across the country for the prime reasons of e- filing, online cause list etc. at the upper level. while most of the missions carried out did come out to be successful it came at a cost of extension of the timeline for this phase as well requirement of more funds from the govt.

### **Phase II**

The very next phase started in 2014-15 taking the steps of phase 1 one step forward. This phase focused on more and more digitization of judiciary, advanced computerizations and use of digitized libraries. It also ensured video conferencing apps in jails for a faster disposal of

cases. Within this phase also came the launch of the website of the supreme court that made this project move a positive two steps forward.

In August 2014, the hon'ble Chief Justice of India launched the e courts national portal in e-courts projects wherein more than 2500 districts and taluka court complexes have secured their presence on the NJDG (National Judicial Data Grid) Portal courts e courts. Gov. in and are providing case status, cause list with many of them also uploading orders judgements.<sup>[3]</sup> All the 687 district courts in India have their own websites to disseminate relating to district courts using drupel templates.<sup>[4]</sup>

### **Phase III**

Practically the last phase and one of the most advanced one. This phase started around 2019 and is still continuing. Though the promises made this phase Is supposed to have the system of the highest technology available such as 5G use, Artificial Intelligence, machine upgradation, speech recognition and many other things. Of these how many will be implemented and what is the strategy for, we are all yet to see but in the recent statements made by the present Chief Justice of India, we might see the coming of AI soon in the higher courts of India.

These are the steps that have been taken till now to upgrade the judicial system of our country to get it in par with the backlogged cases of the system. With the entry of the country in this project's third phase.

### **V. Problems Faced in Time of COVID-19**

The coming of the pandemic got the whole world to a standstill. The majority of the countries ordered complete lockdown to prevent the spread of this deadly disease. India too ordered a complete lockdown on 24<sup>th</sup> of March'2020. The lockdown essentially meant a complete closure of all the non-essential activities in the country. With the order of closure of all the judicial court towards the end of may, the option for people to go approach the courts for redressal also came to a stop. Some high courts in the first week started with the video conferencing of cases through the zoom app, Kerala and Mumbai being the first states to take up urgent matter through online means and Supreme Court hearing a total of 835 cases during the first 22 days of the start of the lockdown. They say that emergencies bring with itself an opportunity and this should be looked upon as a way for judiciary to reinvent itself for a better future.

One of the actions taken by the Supreme court was taking up *Suo moto* cognizance of a writ petition filed and under the use of article 142 of the constitution of India that **extended the limitation period** of filing suits/appeals/cases from after 15<sup>th</sup> March till any further notice provided. In other words, if the date to file any kind of evidence or document or bring a suit/appeal in any special or general law was due after 15<sup>th</sup> march then till the next order that person would be exempted from filing the same. while this move was a well-articulated one, however the burden that the judiciary will face once there is lifting of the lockdown will be intense.

**Lack of updated technology and knowledge in both advocates and judges** came as a major factor that became one of the reasons to not be able to get access to justice during this period. In a letter to CJI by the bar council of India, it said that 90% of the lawyers are uneducated about the latest technology used in virtual courts.<sup>[5]</sup> Most of them have not ever seen a virtual hearing in their life. If this is the situation in the capital city of the country one can only presume what holds for the rest of the country. The total no. of courts in the entire country having the facility of video conferencing is in bare double digits, district courts are nowhere to be even counted. In this situation the only expectations that was there with the courts was to take up only the urgent matters that could not be waited for or postponed. Now what constitutes in an urgent matter amidst this situation and what doesn't is an altogether a different matter.

Another seemingly un-addressed issue has been **lack of updated laws, rules procedures in respect to technology**. Apart from IT Act many other criminal, civil manuals need to be re-wrote/re-visited in order for technology to be implemented which even today's contain parts that have been long obsolete. The technology and the related law need to be go hand in hand with each other in order to bring out the best of each other.

Lack of knowledge being one thing, but **lack of accessibility** is another major factor to take in if we are considering virtual courts as an option to stay for a longer option. We all will agree that this pandemic is not going anywhere anytime soon. We will soon have to adapt ourselves to this new world that we will live in with a way to accept reality as far physically away from each other as possible. This might even mean that virtual reality might actually come into day to day life, but is it an actual possibility? With so many places in the country having no access to internet at all. What kind of solutions are we looking for those lawyers and people who are in hope. Many might even argue that the concept of virtual courts is only

beneficial for the big law firms and lawyers who are well acquainted with the needs of the present situation. The situation for these people look very dull as of now.

these problems are just the tip of the ice berg, while the whole glacier is below it with a lot more that will slowly come to the surface as technology becomes a accepted reality in today's times. There will be so many things that will still pose to be big questions as we divulge into this reality.

## **VI. The Road Ahead**

Rule of law provides within itself that right to access to justice is an important aspect envisaged within the constitution of India. While we will gradually get accustomed to this new lifestyle of ours in a more technology dominated world, the road ahead in this way still looks rocky. A new system is though definitely need but for that to happen the most required change right now is change in the policy making, decision making at an upper authority level. It is also felt that the system of virtual courts might help pace up the process of case forwarding into the next level, as they will be mostly useful in the pre-trial stages of the cases. As online working as been into widespread used in arbitration proceedings, therefore it can be easily adopted into the courts of the country as well. The foreign developed countries are doing far better in handling and conducting judicial trials during this period, we should take cues from their functioning and make improvements in our resources. No doubt with every new idea, innovation few things do get compromised but I personally believe that even if it comes to the expense of some things happening not like before- the upgradation if done properly should be embraced with full hope.

## **VII. CONCLUSION**

Covid-19 has had a major impact on the economy and will continue to do so in the coming few years as well. While we may have to live with it for a longer period of time than expected we will have to adapt ourselves with the different norms of normalcy. change is always better and this is the hope we'll have to put in our judicial system that soon will be coming up with better means as a reactive measure to make it up with the case pendency in courts.

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