

Covid 19 And Judicial System - From A Pragmatic to Modern approach

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Abstract

The e-government efforts were implemented in all of district and subordinate courts preceding to the COVID-19 issue. With the help of Information and Communication Technology and the online world, E-courts systems were created to make judging easier, clearer, and less expensive for everyone. The E-courts Services mobile app was developed in 2017, much before the COVID-19 crisis. It's important to remember that before COVID-19, there was never a hurry to use technology in India's justice system, and the court had purposefully turned down it. However, even before COVID-19, the judiciary was split regarding the merits or propriety of using video conferencing in court proceedings, even though technology had been around for some time. The authors have discussed aspects of the e-court system in the slump that the Indian experienced while imposing law and order.

Keywords: Covid-19, E-courts, India, Law, Information Technology

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INTRODUCTION

E-Courts: A Step Towards Modern Courts

The "E-courts Project" has made it possible for all court of law, from the district as well as "taluka" levels to the highest court, to connect to one another in a digital format. The project was first thought of as part of the "National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary –2005," which was made by the Sector Skills Councils of India's electronic-Committee. When it was first approved in 2010, it saved consumers a significant amount of time while also delivering a number of additional advantages. The public can use a huge spectrum of E-Court services at a courthouse's Judicial Service Center. Because of this, most courts had electronic summons, warnings, warrants, as well as internet filing in place prior to the COVID-19 issue.

They also have electronic cause lists, case statuses, internet filing, as well as PDF versions of orders and judgements at their convenience. Also, the webpage for the court gave the claimants all the information they needed, such as days of

Supreme Court of India official app is available for both Android and iOS devices. It is free to download and offers access to various essential information, for example a customizable dashboard that includes a list of all the cases now ongoing and those that have already been resolved. Access, download, and sharing are all available in an easy-to-use interface.

The E-Courts App (Version 4.3) For More Smooth Functioning

The E-courts Services mobile app was developed in 2017, much before the COVID-19 crisis. The E-Court Services App covers all Subordinate Courts and the majority of the Supreme Court of the United States. It may be used for either the District or High Court. The Case Information System assigns a unique number to every complaint made to a district or taluka court in India. It is entered into the application to obtain current case status and other pertinent information. This system is useful for Indian attorneys and petitioners. Case Status can be used in conjunction with the Cause List and Calendar to narrow down the search results. A 'My Cases' feature enables litigants and attorneys to keep all relevant cases. This facilitates the creation and management of a personal case journal or portfolio for future reference.

There are a number of additional features provided by the E-Court Services App that are not included here: status of the case, cause list, next hearing date, etc. Lawyers and litigants may now pay court costs electronically. Scanning a QR code in the app gives you access to the case's current status. More than thirty million cases from all of India's eighteen thousand District & Subordinate Courts as well as twenty-one High Courts are available on the App. Appreciation for court's digitalization initiatives was evident from the reality that the App had been downloaded more than seventeen lakh (1.7 million) times in just a few months. The Historical record of Case Hearings option in the App is a useful method that shows the background of the case from the 1st hearing to the latest hearing. The Judgment option, on the other hand, provides a link to all of the judgments and orders that

work, holidays, names of judicial officers, etc. Before the COVID-19 outbreak, the Supreme Court App had already been introduced, which was a significant step towards digitizing the justice administration system. According to the Chief Justice of India, a "artificial intelligence-powered legal translation system" will enhance the performance of translation and improve the functioning of the Indian judicial system (IJS). Translated versions of the Supreme Court app will be available in nine different regional languages. In the past, manual translation in court cases was a serious concern since it was time-consuming and labor-intensive, resulting in long delays in the legal process.

have been issued and posted in the specified case. The courts have done the following in response to COVID-19: "An E-courts to E-Judiciary Conversion Acceleration in the Post-COVID-19 Crisis Era", E-courts in India are digital courts that use Internet & ICTs to give digital information to many stakeholders, so it can be said that these courts are e-courts. One-way or two-way communication is possible with this kind of online data. In order to provide information to the public, the courts must provide it themselves, such as by putting all of their material online. Additionally, it involves providing information by SMS or WhatsApp to a specific individual. A two-way traffic, on the other hand, involves online contact between litigants, attorneys, and the courts, for instance.

Even before the COVID-19 problem erupted, several other nations throughout the globe, like Singapore, the United States, South Korea, etc. had already adopted E-courts as a standard legal practise. The COVID-19 situation required a significantly more urgent requirement for online contact between stakeholders & courts before electronic courts were already gaining importance in decreasing court congestion in India and other countries. A step up from e-courts is e-judiciary. Cases can be registered digitally, and judges and lawyers can talk to each other online. There are also online methods, online questioning and cross-questioning of witnesses, as well as online decisions. All of these elements are included in the concept of e-judiciary. Because E-courts worked so well, there was no pressure to move forward, and things moved at their own bureaucratic pace before COVID-19. Because of social distance as a safety protocol norm, however, the COVID-19 crisis has begun to push for the next level of E-courts and E-judiciary to be implemented sooner rather than later, rather than wait for the next crisis to occur. There has been a rise in the usage of E-judiciary as a preferable means of administering justice because of the COVID-19 issue. s

Covid-19 Effect On The Working Of Lok Adalats (People's Courts)

The Lok Adalats were established in India in the early 1980s as a venue for resolving legal issues and pre-litigation

problems. There have been more than 8.25 million reported cases settled through the “Lok Adalat” process since its commencement. With the goal of making Lok Adalats more accessible, Mobile Lok Adalats have been established in different regions of the nation. As has been well noted, the concept is a new Indian addition to international law. The formation opened a new era in the nation’s court system and was effective in providing defendants with an additional place to express their concerns. The Gandhian philosophy underpins this method. ADR (Alternative Dispute Resolution) systems include this as a component. Its decision is final and non-appealable because it is considered a civil court ruling and is binding on the parties. The “Legal Services Authority Act, 1987”, was mandated by Art. 39-A to grant statutory recognition to lokadalat. At the federal and state levels they are held in every court in the country, from the Supreme Court to the Taluk Levels, on the same day. Thousands of instances are decided in a short timeframe.

The jurisdiction of the lok Adalat is for “criminal compoundable offences; NI Act cases; bank recovery; MACT,” “labour disputes,” “electricity and water bills (excluding non-compoundable); matrimonial disputes; service matters relating to pay and allowances and retirement benefits, etc.” Hearings have always been conducted in person by the parties involved. However, there has been a recent shift in the way they operate. With regard to this route of justice, the COVID-19 crisis safety procedures necessitated its use. From the fact that this new trend started in Punjab, it is clear that this is the situation. “Punjab State

Legal Services Authority” decided to convene the first ever e-LA in all of Punjab on December 12, 2020, when COVID-19 was identified. Both the District & Sessions Judge and the PLSA Member Secretary made it crystal clear that the decision was made due to the disease outbreak. Later followed by other states.

Covid-19: Functioning Of Courts Amidst Covid 19 Crisis

With the COVID-19 crisis in India, as well as in other countries, judicial administration was disrupted and courts were unable to function normally. The effects of the COVID-19 problem could be felt as far down as the district and state court levels. Court orders made by competent judicial bodies during the course of the COVID-19 crisis may tell us a lot about the influence the crisis had on the operation of Indian courts.

As a result of the COVID-19 case, the apex court of India also set “standard operating procedures (SOPs)” for attorneys and in-person plaintiffs to participate in urgent sessions via video conference. To keep staff protected, the court further released a safety warning in the wake of the COVID-19 situation: “In view of the advisory issued by the

Government of India cautioning against mass gatherings to avoid the spread of Novel Coronavirus (sic) (COVID-19) infection, the following precautionary measures are being put in place.” Since mid-March 2020, the Supreme Court of India has been functioning at a lesser capacity “to assist limit the spread of COVID-19. However, thanks to technology, it has been able to continue hearing important issues while protecting the health of judges, attorneys, litigants, and registry employees. E-filing and videoconferencing have been crucial to its continued existence.”

After the COVID-19 situation, when it was discovered that postal offices were unreachable during lockdown, the court decided to use technology in legal processes and instructed those notices of summons, plea be delivered by electronic mail, fax, or an online messaging service. In light of the challenges that lawyers as well as litigants were experiencing as a result of COVID-19’s lockdown, they decided to broaden the statute of limitations for instituting arbitral proceedings & check bounce cases beginning on 15th March and continuing until further commands. After the lockdown was removed, they extended the period of limitation for arbitration by forty-five days, which had an impact on how Commercial Courts operated.

It has been a common occurrence from the commencement of COVID-19 crisis-related orders being issued by the highest courts in the country, namely the State level. Take, for example, the Hon’ble Chief Justice of Haryana & Punjab High Court who, in April 2020, ordered the Hon’ble Judicial Officers & Officials to strictly follow the proper precautionary measures including the use of masks and hand sanitizers. Additionally, the court was instructed to ensure the social distancing within its walls by making sure that anyone brought in by the police for the intention of being

held on remand wore a mask and washed his hands thoroughly before entering the court complex. High court across the country issued necessary directions in March 2020 to ensure that the COVID-19 crisis did not spread, and that district & subordinate courts all around country obeyed those directives. According to a directive given by Haryana & Punjab High Court Chief Justice on March 17, 2020, all District & Subordinate Courts in the Haryana, Punjab, as well as Chandigarh states must follow these rules.

All courts in the different part of the States were ordered to focus on bail and urgent stay/injunction matters until further orders were given. The adjournment of the remaining cases was ordered. There was a deadline of 31.03.2020 set for the final argument of all issues (including those bound by a deadline). To reduce human footfall in the Court Complex, if requested, the Court will assess the exemption petitions compassionately and prevent personal appearances as far as possible. The Judicial Officers were instructed to make every effort to keep the individual Court Rooms from becoming overcrowded while avoiding the passing of unfavourable or default rulings.

It was decided that a convict who was already on trial would

not be brought before lower courts until more commands were given. It was also decided that video conferencing would be utilised for the mentioned reasons above, such as extending remand. Significantly, the Courts involved were directed to employ Video Conferencing services to prevent human interaction in all issues. An order issued by the District & Sessions Judges openly stated that they had to work with local authorities, health officials, as well as the Bar Association to assure that all areas of the courthouse, including the courtroom, canteen, & bar rooms, were free from hazards. During this period, the BR as well as Canteens should be closed if necessary. The members of the BA were also requested to do so in order to reduce overcrowding in the BR.

Also, the orders forbade clients from showing up in person at the courthouse, directing attorneys to counsel their clients to stay away from the complex unless the court specifically ordered them to do so or their presence was inevitable. The “unit criterion and Action Plan”, which were applicable to all subordinate courts, have been suspended until March 31, 2020. Chandigarh Judicial Academy has been ordered to cease all of its “Institutional Training Programs” till further orders are given. District & Sessions Magistrates were given the authority to implement administrative measures on their own, with previous notification to the relevant Hon’ble Administrative Judge, in reaction to the pandemic new coronavirus. Following public officials’ recommendations for safe practises was mandatory.

Liberalization of Criminal Law: Temporary Bail Reforms during COVID 19 to Secure Rights of Prisoners

Bail is a monetary guarantee made by a defendant in exchange for his or her release from jail awaiting the outcome of an investigation or trial. The SC of India has said many

times that bail is important because jailing someone goes against their right to be free. If a person needs to be locked up, the courts should follow how the Constitution’s right to freedom is interpreted by the “Code of Criminal Procedure of 1973”. And over 478,600 people are locked up in India’s 1350 prisons, which have an average rate of occupancy is 118.5 percent.

But the average doesn’t show the whole picture. Based on a comprehensive look at the data that is already available, prison systems in some regions are more overcrowded than others. There is a 174.9 percent occupancy rate in Delhi, followed by Uttar Pradesh at 167.9 percent & Uttarakhand at 159.0 percent, respectively.

Maintaining social distance conventions in India’s overcrowded jails, in which cleanliness was impossible, was a difficult undertaking. Because of India’s weak jail security, the virus would have quickly spread to thousands of convicts if it hadn’t been brought to their notice by other

countries. So the States took action to safeguard prisoners since health is a fundamental human right. Healthcare is a FR under Art. 21 of IC and is guaranteed to everyone regardless of their status, whether they are innocent, incarcerated, or in the process of being convicted of a crime. As the SC of India has said many times, the govt. has to protect the citizen’s rights. Conventions like the United Nations Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) are included in this category of international treaties. When epidemic diseases are spreading and there are more inmates than the normal occupancy capacity of a prison, laws like “the Prisoners Act” and “the Model Prison Manual 2016” require that precautions be taken to keep inmates safe and secure in addition to their constitutional right to be detained. A defendant’s right to bail may thus be regarded as part of Art. 21 of Indian Constitution, Right to Life and Right to Health in the event of a coronavirus outbreak. There was a chance to alter and improve bail law in the Indian judiciary in light of COVID-19, but the courts failed to implement this concept in its genuine form and spirit, according to this paper. A review of the Indian States’ efforts to safeguard inmates’ health is provided in the paragraphs that follow.

Jail Overcrowding: An Alarming Need Of Reduction Of Inmates In Jail

In jails, overcrowding increases the danger of illness and decreases the quality of hygiene and sanitation. On March 23, 2020, the Supreme Court of India sent out an order saying that overcrowding in jails is a serious risk to public health & safety of prisoners. Each state’s chief legal officer, home secretary, and director general of corrections were inducted into a three-person High Powered Committee, which was made up of representatives from each of the 28 states in the nation. Based on their crimes, their sentences, and the severity of their charges, the High Powered Committee was responsible for determining whether or not offenders should be released on bail on an interim basis. The

courts freed a total of 68,264 convicts throughout the nation on interim bail until December 14, 2020, in accordance with the High Powered Committee’s rules. Analysis of the factors used by the High Powered Committee to release inmates on bail gives valuable information. In two sections, we evaluate the HPCs’ classification of inmates critically. Even the courts, apart from the HPCs, failed to examine medically-based bail petitions when making bail decisions, ignoring the everyday danger of exposure to the lethal virus for those in poor condition. Poet and activist P Varavara Rao, was held in judicial detention for more than two years after being accused with illegal activities under the Unlawful Activities (Prevention) Act, 1967. The Supreme Court and the Bombay High Court repeatedly refused his request for temporary relief, notwithstanding his bad physical condition and senior age.

The court said that people who are in jail while their cases are

being heard but who have not been given temporary release by the High Powered Committee can ask competent courts for interim/regular bail. Bail should be evaluated on the basis of the defendant's character and the justice system. However, contrary to the decision of Apex Court, the categorization of convicts by the High Powered Committees did have an impact on the trial courts when ruling on the interim bail petitions of the inmates. When giving bail orders or turning down bail requests, courts have said that the situation of the applicant does not fit the parameters set by High Powered Committees. When giving bail orders or turning down bail requests, courts have said that the scenario of the applicant doesn't fit the criteria set by High Powered Committees. In "National Alliance for People's Movements v. State of Maharashtra" case, the Supreme court did not agree that the decisions of High Court could have an effect on lower courts. By using the requirements of High-Powered Committees, courts rejected the inmates who were left out the chance to have a fair trial. As a result, it appears that they have defined the legal restrictions of the extent to which convicted individuals who have been released on bail on an interim basis have a right to healthcare.

Relieving prison congestion in response to the unanticipated COVID-19 emergency by temporarily releasing certain convicts on bail was admirable, but showed vulnerabilities in the system that need rapid repair. High Powered Committees were primarily concerned with decongesting prisons, and inmates' rights to health were ignored, according to our opinion. There should have been appropriate medical facilities for individuals left behind by the High Powered Committees and jail officials. Inmates and jail employees should have been tested on a regular basis, and testing records should have been updated on a regular basis as well. The jails should have also been examined by authorities on a regular basis to ensure better cleanliness and hygiene. In the second wave of the epidemic, the vulnerability of Indian jails is brought into the open. More than 1500 convicts & prison personnel were infected with the virus between March 1 and May 15, 2021, according to the web tracking system. Over the course of this time period, 267 inmates in three different

prisons in Delhi were infected.

Issue Of Accessibility During Pandemic

However, bail hearings were often delayed throughout the lockdown period because to issues with paperwork, failed video connections during e-hearings, and the absence of lawyers. Only "very important issues" were heard by video connection, but there was a lack of clarity regarding how the courts, particularly district courts, functioned and what constitutes an "urgent matter." Bail problems should have been given more consideration by the courts during these unsettled times. Bail petitions during a pandemic cannot be considered an "urgent judicial issue," according to the High Courts in various situations. The most egregious breach of

an individual's right to liberty, in our opinion, is the rejection of bail on the basis of a lack of evidence, particularly in the current climate.

Physical To Virtual Hearings - Trend Continued

Because of these technologies, there are more and more court hearings that take place online. During the time before the COVID-19 crisis, criminal trials commonly utilized virtual processes when the accused couldn't be there in person for safety reasons. Courts have commenced using videoconferencing to hear even non-crisis cases because of COVID-19 crisis safety standards. newspaper headline that reads, "High Court delays usual selection of medical faculty," followed by actual statistics regarding the case, such as the fact that the parties appeared before the Bench through "video-conferencing."

The Ministry of Law and Justice has given money to "set up video conference cabins in 2,506 court complexes across the country." In September 2020, the cabins were built with Rs. 5.21 crore (around Rs. 5 million), and in October, equipment was bought with Rs. 28.89 crore (nearly Rs. 29 million).

It's important to remember that before COVID-19, there was never a hurry to use technology in India's justice system, and the court had purposefully turned down it. However, even before COVID-19, the judiciary was split regarding the merits or propriety of using video conferencing in court proceedings, even though technology had been around for some time. It seemed that even the Apex Court was unsure about its position on videoconferencing and e-hearings in the administration of justice.

An Examination Of India's E-Judiciary System And The Covid-19 Crisis

No wonder e-judiciary is being promoted as a more secure alternative in the wake of the COVID-19 controversy. As a result of this quick transformation, attorneys and litigants face a variety of difficulties that must be addressed urgently in order to minimise undue suffering during this transition time.

COVID-19 has not only brought down the economy throughout the globe but has also had a negative influence on numerous professions & companies. This trend is also true of the legal field. COVID-19 has decelerated nearly the entire world, including India's legal system, which was already not renowned for being known for being speedy even though things seem to be going smoothly. While new cases have been instituted in both the higher and lower judiciaries since the state-wide lockdown began on March 25 (2020), the rate of dismissal has been substantially influenced by the forced closure of courts, according to official statistics. With public health and access to justice at stake, judges have had to improvise throughout this epidemic, and "all courts, from the Supreme Court to the highest state courts to district courts,

have operated in a severely constrained fashion. For the most part, courts have already chosen to keep the restrictions on how they operate.” The cases sitting before the Constitution benches have been relegated to “limited benches” that preside over just a few items each day. In India’s courts, 82,725 cases were filed in April, however only 35,169 cases were resolved within that time period. In 2019, the average number of new cases that were filed each month was over fourteen lakh (1.4 million), whilst the average incidence rate that were closed each month was 13.25 lakh. When compared to 2019, these numbers are significantly different (1.325 million).

Furthermore, the Indian Parliament was concerned enough to establish “Parliamentary Committee Panel” (henceforth also called “the Parliamentary Panel”) that would investigate the COVID-19 incident. An important recommendation of this Parliamentary Panel’s report on the COVID-19 epidemic was that “virtual courts” should be continued even after the pandemic is gone, since “digital justice is cheaper and quicker” & because the court is “more a service than a location.” However, the “Parliamentary Panel (PP)” agreed that despite the fact that online courts do face significant challenges, they are still required to function because they are superior to traditional courts. One of the Panel’s suggestions is that law schools keep up with the times & teach computer classes. Another is that laws should be changed to permit for virtual court proceedings.

The Bar, on the other hand, seemed to have qualms about these new technical advances in court operations and did not seem to embrace them openly. There had been complaints made by bar officials to the Parliamentary Panel that lawyers who were proficient with technology got preferential treatment at the expense of giving others a chance to submit their arguments or adjust the course of arguments based on how cases were progressing. The Bar said that “a lawyer gets to know how the judges feel and has a better chance of convincing them during in-person hearings”. Digital proceedings, on the other hand, are very stressful for both the solicitors as well as the judges. Video conferencing proof can mess up nonverbal evidence like facial gestures, body language, as well as expressions.

Legal professionals said that in physical hearings, they have a better understanding of the judges’ moods and are better able to persuade them to change the line of argument built on

“changing dynamics” of a case throughout a hearing. Online hearings, on the other hand, put both the lawyers and the judges under a lot of stress. There have been concerns raised about the potential distortion of nonverbal indicators like as facial expression and posture when evidence is obtained by video conferencing.

However, the PP argues that “appellate tribunals” such as the “Telecom Disputes Settlement and Appellate Tribunal (TDSAT)”, “the National Company Law Appellate Tribunal (NCLAT)”, and “the Intellectual Property Appellate Board

(IPAB)” can make adjustments to a system of entirely virtual proceedings because no advocates or parties are required to appear in person. “The legal field is in a place where lawyers and judges are satisfied with their old methods and don’t want to learn how to use technology in law,” said someone else. Even though the use of new tech might give the judicial career fields a different dimension.

Most district and lower court lawyers lacked both a laptop and computer skills necessary for virtual sessions, even the Parliamentary Panel acknowledged. This was despite their belief that “In approaching times, technology is going to transform the game and advocates would be forced to apply technical abilities in tandem with their specialised legal knowledge and, thus, they should stay up with the changing times.”

CONCLUSION AND SUGGESTION

The Digital Divide - Access To Justice

The COVID-19 problem in India has resulted in yet another major impact, and it cannot be overlooked. Indian courts, at all levels, from the supreme court to the district court, have issued rules requiring solely virtual hearings in some matters amid the COVID-19 crisis.” Because of ground realities, many plaintiffs are unable to pursue justice for no fault of their own. The COVID-19 crisis issue is to blame for the inability of attorneys to argue in far-flung rural and isolated places where there is no internet access at all. After lockdown, it was clear that the worldwide COVID-19 difficulty required a fast, rapid, and never-seen-before change in how courts at all levels in India were operate. A big reason for this is the change from E-Courts to E-Judiciary, which includes virtual hearings.

Observed advancements in India’s judicial system are projected to continue in the future. The application of Artificial Intelligence (AI) in the administration of justice is on the rise. According to the Hon’ble Chief Justice of India (CJI), the emergence of “Artificial Intelligence (AI)” in Dec. is probable to bring about more modifications in India’s judicial system and help enhance administration as well as the delivery of verdicts. Courts of law will not be replaced by computers, the Hon’ble CJI said. When asked about the possibility of introducing artificial intelligence, India’s Chief Justice remarked, “We plan to implement it, if feasible.” Before introducing yourself, there are a slew of considerations to be made. ‘We don’t want to convey the

notion that anything will ever replace the judges,’ says a spokesperson for the organization.

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