



E-Justice after the Pandemic: Challenges and Opportunities

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Abstract: As a result of the spread of the COVID-19 virus, humanity has descended into anarchy at every level. Following the WHO's lead, a "global response" to the epidemic was organised on a variety of levels, primarily at the national government level, by the countries affected. The world's response to COVID-19 in India is notable for its re-imagination as well as its resilience. The "new normal" has emerged in the wake of the pandemic as a means of reorganising global society. One of the most fundamental and inherent human rights is the ability to obtain justice; the denial of this right significantly injures the impoverished. The efficiency of a legal system is largely determined by how well-functioning its legal system is and how flexible its structures for resolving grievances are. Corrective legislation up hold substantive rights. Reformative principles are so significant that their proper meaning can only be determined by the availability of a solution. It's because of the pandemic's transnational and worldwide nature that global law has come back into focus. Many questions have arisen about the state's duty and the obligation of states to protect under Indian law, not just in the context of global organisations like WHO. Many general concepts took on new dimensions as governments began to reclaim the concept of a global network of states. At a time when this epidemic is killing people, main focus is on how "E-Justice can be used to build a new future for national politics characterised by empathy, fraternity," justice and respect for human rights.

Key Words: WHO, COVID-19, INDIA, E-Justice, Global

Introduction

"No State can be secure if its citizens are condemned to poverty without hope, no nation can advance without peace and security," can never be safe or prosperous if its people's fundamental rights are not upheld.¹

One of the most fundamental and inherent human rights is the ability to obtain justice; the denial of this right significantly injures the impoverished. The efficiency of a legal system is largely determined by how well-functioning its legal system is and how flexible its structures for resolving grievances are. Corrective legislation up hold substantive rights. Reformative principles are so significant that their proper meaning can only be determined by the availability of a solution. Having access to justice is one of the most crucial parts of employing the remedies that are available. The

importance of having access to justice according to contemporary theory, the preservation of social order serves as the state's primary duty since it shields the vulnerable against the powerful.

Nonetheless, the disadvantaged and oppressed groups of the community do not benefit from the current justice administration system. There are a number of issues with it, the most significant being delays and costs. The nature and state of the legal and judicial processes also contribute to the exclusion of people from the judicial system, in addition to its high cost. Due to the complexity of legal proceedings, it was impossible for the poor to grasp them. They take a seat in as defense less onlookers in their own case in court. The formalities of court processes entirely confound them, which further distances them from the law, the legal system, and the judicial system. procedure.

Because they are the only ones with the golden key to open the doors to justice, the wealthy and affluent use the courts solely to defend their rights, leaving the poor's rights undefended. In the words

¹ Kofi Annan, "The Eyes of the World are Upon You" 44 (3) UN Chronicle 4 (September, 2006)

of A.S. Anand, "The poor, illiterate, and weaker sections in our country suffer day in and day out in their struggle for survival and look to those who have promised them equality—social, political, and economic." Anand effectively articulated the flaw in the current legal system. While we, as the nation's defenders of the Rule of Law, may not be able to address every issue they face, we may do everything within our power to support and preserve the fundamental ideal of "equal justice for all" as much as is practicable. I am deeply troubled by the fact that a great deal of under trial prisoners nationwide endure protracted incarceration, even in minor criminal cases, simply because they are unable to provide bail bonds and are released on bond for even bailable offenses. Many of them only exhibit criminal tendencies while in these kinds of confinements and emerge as skilled offenders.

Scope of the study:

The study's significance lies in its exploration of the implementation of virtual courts in India as a transformative step towards modernizing the legal system. Virtual courts hold promise for enhancing accessibility, efficiency, and inclusivity in legal proceedings, potentially overcoming geographical barriers and reducing costs associated with traditional court appearances.² However, amidst these opportunities, the study addresses critical challenges such as the authentication of witness identities and online evidence, and the protection of confidentiality in digital court proceedings. By investigating these issues, the study aims to contribute valuable insights and recommendations that can guide policy-makers and practitioners in developing robust frameworks for virtual courts, ensuring their reliability, security, and effectiveness in advancing justice delivery in India.

Objectives of the Study

After reviewing the existing literature on access to justice facilitated by virtual courts and other approaches, the researcher has identified the primary goal of this study is to uncover the practical challenges and realities involved in

implementing virtual court services for underserved populations. By engaging multiple stakeholders, the researcher seeks to address identified obstacles and propose effective solutions. The study aims to analyze and examine these research issues to achieve the following objectives:

- (i) To explore the adaptation and effectiveness of access to justice as a human right within the Indian legal and judicial system.
- (ii) To assess the effectiveness of constitutional and statutory provisions in securing access to justice in India.
- (iii) To examine the modern trends in Right to access to justice.
- (iv) To examine the role of virtual courts in facilitating access to justice during the COVID-19 crisis and in the subsequent post-pandemic era.³
- (v) To examine the obstacles encountered by virtual courts in relation to ensuring access to justice.
- (vi) To analyse the authenticity & reliability of evidence produced through virtual courts.⁴

Hypothesis

- (i) The current study endeavour aims to confirm the subsequent conjectures: It is assumed that the implementation of 'virtual courts' in India presents a promising avenue for the development and modernization of the legal community.
- (ii) Is the virtual court will ensure access to justice meeting the ends of human rights.
- (iii) It is assumed that several legal issues may arise concerning the reliability and authenticity of witness identities and evidence presented online.
- (iv) Whether the confidentiality of court proceedings are at risk due to the

³ Rattan, J., & Rattan, V. (2021). "The COVID-19 crisis – The new challenges before the Indian justice and court administration system." *International Journal for Court Administration*, 12(2)

⁴ *Research guides: Organizing your Social Sciences research paper: Footnotes or endnotes?* (n.d.)

² Iyer, Krishana, Law, Society and Collective Consciousness (Allied Pub. Pvt. Ltd., New Delhi, 1982).

involvement of technology and software that could potentially pose security and data privacy threats.

Research Questions

The researcher framed the research questions based on the current virtual court system. Understanding the ground realities and challenges in virtual court services is essential. The researcher delineates and examines the following formulated research questions.

- (i) Does the concept of access to justice as a human right (or fundamental right) is effectively implemented in India? If not what are the measure to be taken?
- (ii) What are the constitutional provisions in India that ensure access to justice?
- (iii) What are the modern trends in right to access to justice?
- (iv) To what degree were virtual courts effective in addressing access to justice issues during the COVID-19 pandemic and in the post-pandemic phase?
- (v) To analyze the challenges and barriers faced by virtual courts in relation to access to justice in India.
- (vi) How can the authenticity and reliability of witness testimonies and evidence be assessed in virtual courts?

The main sources used for this research project were decisions made by the Indian Supreme Court and many High Courts, as well as international treaties pertaining to access to justice in India.

Literature Review

The examination of relevant literature as well as several journals, periodicals, news articles, and websites served as secondary sources for this study. Critical analysis and evaluation have been applied to the gathered material. A comparison analysis will also be done in this study. In this regard, studies of the legal frameworks governing various nations' legal assistance and service programs have been conducted. The current study examines the writings of the different writers listed below in order to fulfill the requirements of the literature review:

Dr. P.C. Juneja, conducts a thorough investigation on the idea of access to justice from an Indian

standpoint. It covers every facet of the right to access justice and looks at how the legislature and courts interpret the constitution, paying particular attention to the right to access justice. It also critically analyzes the roles played by lawyers, students, and volunteer organizations in the current environment.⁵ Ultimately, it is determined that the fundamental rights guaranteeing justice to every citizen. The preamble's promises of social, economic, and political justice cannot be fulfilled unless the three branches of government work together to determine how best to serve Indian citizens poor, equal access to the legal system. **S. S. Sharma** conducts a thorough analysis of the human right to equality, with particular attention to its application in the state of Punjab. In order to comprehend the issue of access to justice, it examines the historical evolution of the right to legal assistance in the United States, Canada, and the United Kingdom. This author conducts an empirical investigation on the operations of Punjab's Legal Services Authorities.

Sangita Dhingra Sehgal, endeavors to examine every facet of the Legal Services Authorities Act, 1987. The book's author outlined a section-by-section study of the Act and addressed the several guidelines and regulations pertaining to the NALSA's entitlement to legal aid.

Sujan Singh, discusses the entitlement to legal aid from the standpoint of human rights. The author conducts a comparative analysis of the different nations in this regard. It also covers the evolution of India's free legal aid rights historically.

According to **Michael Zender's** book, writing about the legal system is like trying to hit a moving target. This addresses the many facets of the right to access justice with regard to the standard of legal representation, the function of judges, and the administration of justice in the criminal and civil systems.

In five Nordic nations, **O. Halvorsen Rønning and O. Hammerslev** (eds.) conduct a thorough

⁵ *Access to justice*. (n.d.).

<https://www.lw.com/en/global-pro-bono-survey/access-to-justice>

investigation of legal assistance and socio legal concerns. Additionally, it evaluates and contrasts the legal aid programs in the Nordic nations, especially with regard to the reforms occurring in the welfare states, and explores if there is a distinct Nordic legal aid model.

The welfare state and access to justice are intrinsically intertwined. judicial assistance is a government welfare program that gives those who otherwise couldn't afford it access to the judicial system. By giving those who are entitled to welfare provisions like housing, health care, and equal opportunities for employment, legal aid also helps to ensure that these provisions are upheld. payment for equivalent labour, etc. The rule of law is only a make-believe catchphrase and a fantasy created by jurists if people cannot obtain justice. Ensuring that the rich and the poor have equal access to justice is crucial for preserving the supremacy of law.⁶ A legal service is committed to the idea of equal justice for the underprivileged, and it symbolizes the spirit of equality. Equal access to courts and other governmental bodies is a prerequisite for equal justice and fair treatment within the framework of the legal system. In contemporary legal, political, and social thought, the goal of social justice is closely linked to legal help. Instead of being seen as an unnecessary addition to our legal system, access to justice should be understood as a fundamental part of it. It is neither an idealistic endeavor nor a philanthropic settlement. It is an inherent and essential part of the legal system's operation. It is a successful strategy for enforcing social justice, which contributes to actual justice in society. This has to be seen as essential for the development of national cohesion and social solidarity among the different Indian community sectors. It should be regarded as the State's statutory duty to its people. For the impoverished, this means that being denied access to justice is a serious injustice. Therefore, ensuring justice for everybody is one of the most pressing demands of the day.

⁶ UN Chronicle 4 (September, 2006). 2 A.V. Dicey, Law and Public Opinion in England 261 (1962).

Access to Justice Movement in India

A democratic nation must have access to justice in order to survive, and India's Constitution established a democratic model. Justice must be served to all people for there to be a calm and orderly society, and in a democratic system, legal counsel has proven essential to ensuring justice. The Indian Constitution's preamble places the word "justice" first or in priority order, and the document has also established the principles of equal protection under the law and equality before the law. Because of this, the idea of equal justice is included in our Constitution. The most crucial idea for obtaining justice is the right to access justice. The objective of equal justice, which states that those who are economically disadvantaged, members of marginalized groups, oppressed, uninformed, or illiterate, should not be excluded from the legal system. In order to facilitate our analysis, we can split this movement into two stages, which fall under the following categories:

The time leading up to independence

Studying the Dharma sastras, Vedas, Shrutis, and Smritis demonstrates that our system of delivering justice was not only completely evolved but also extremely methodical. The King directly oversaw the administration of justice throughout the Mughal era. A party may choose to have an attorney or a Vakeel represent them in court. The disagreement was resolved in front of the village courts, sometimes known as tribunals. The principal approach employed in these courts was conciliation. Regarding court access in contemporary India, it is shaped by the English legal system. The British brought contemporary court systems to British India for the first time. These events led to the creation of an Indian justice system, despite the fact that it was done so for British protection.

The codification of Indian laws was a result of these advancements. When the Code of Criminal Procedure was initially enacted in 1898, it had a clause that permitted the accused to hire legal counsel at the public expense while facing a capital offense trial in front of the Sessions Court. It is fair to say that the Bombay Legal help Society, which has been operating since 1925 and has given the State of Bombay's impoverished access to legal help, is responsible for planting the seeds of the

Indian legal assistance movement. The Rushcliffe body's findings was brought to the attention of the Government of British India in 1945 by the Bombay Legal Aid Society, which also suggested the creation of a comparable body in India must look at the legal aid scenario.⁷

The Era Following Independence:

The first comprehensive and important research carried out in the aftermath of India's independence was by the Committee on Legal Aid and Legal Advice in the State of Bombay. Justice P.N. Bhagwati presided over the Committee in 1949. The Committee was established with the purpose of investigating the legal aid programs available to underprivileged groups. The Bombay Legal Aid and Advice Committee's recommendations and Rushcliffe's Committee's recommendations were nearly identical. Similarly, Mr. Arthur Trevor Harris, the Chief Justice of the Calcutta High Court at the time, oversaw a committee that the West Bengal government created in 1949. The Committee proposed that in both criminal and civil matters, people should be eligible for free legal help. Prior to 1958, there were a few places such as Bombay, Calcutta, and Bangalore where volunteer legal aid organizations were quite active. However, there were no systematic attempts by the government or other agencies to provide legal help to the impoverished sections of society. The significant event occurred in 1958 with the submission of the report by the Fourteen Law Commission of India.

India's XIV Law Commission Report:

Legal aid received a whole chapter in the Law Commission of India's 14th Report, which was turned in in September 1958. The chairman of the commission was Mr. M.C. Setalvad. The Law Commission highly recommended that consideration be given to the reports of the Arthur Trevor Harris Committee and the Bombay Legal Aid and Advice Committee. Regarding legal aid, the Law Commission recommended the following:⁸

a) The modern state, and in particular a welfare state, owes its citizens free legal aid to those in need and those with low resources. Therefore, the state must acknowledge this duty and provide funding so that the underprivileged and those with low resources can receive this kind of legal assistance.

b) The majority, if not all, of the legal profession takes accountability for managing legal assistance programs.

c) The legal profession has a moral and social duty to assist the underprivileged in society, which should be fulfilled by each member of the profession providing a set quantity of legal assistance at no cost to the underprivileged.

d) As soon as financial circumstances allow, all states implement, with certain modifications, the 1949 Bombay Legal Aid and Advice Committee and West Bengal Committee scheme.

e) The Bar Association needs to act quickly to provide voluntary legal assistance.

The commission also suggested that quick action be done to offer legal aid to the underprivileged. The following are the suggestions:

a) Legal representation in all cases heard by the Court of Session at government expense for those accused who lack financial resources.

b) Those without means should be able to obtain legal representation at government expense in criminal proceedings.

c) The government should pay for the representation of attorneys in jail and the availability of appeals.

d) The term "pauper," as used in CPC order XXXIII, ought to be substituted with the terms "assisted persons" or "poor persons".

Based on the Law Commission's recommendation the Indian government created an outline legal aid program in 1960 and forwarded it to all states and different legal aid organizations for implementation; however, the states stated they were unable to do so because of financial constraints.⁹ Every facet of access to justice was

⁷ Nyaya Deep, Vol. II, 47 (October - December, 1999)

⁸ PUDR v. Union of India, AIR 1982 SC 1473.

⁹ <http://legalaidinindia.weebly.com/chapter-i.html> (visited on 17.07.2024).

addressed by the comprehensive National Scheme, which was incredibly complex. The plan called for the creation of a legal assistance fund in each state, which would be augmented by donations from people who were partially supported, grants from the federal government, and cash from the state government.

Assisted individuals may incur costs from their opponents, legal fees, and private contributions. In order to explore legal aid issues, the Indian government convened a conference of State Law Ministers in 1962, but no firm conclusions were taken. At the "Third All India Lawyers Conference" in 1962, the topic of legal assistance was once again raised, and it was determined that the state should be in charge of providing it. The Free Legal Aid Bill, 1970 was a bill that Mr. Mudhulimaye, a member of parliament, introduced into the Lok Sabha on March 13, 1970. The purpose of this measure was to underline that, in order to maintain people's personal liberties and ensure appropriate administration of the criminal justice system, the state must offer free legal aid to all impoverished citizens. Additionally, a National Conference on Legal Aid was convened in New Delhi in 1970 to discuss the issue.

The conference demanded that the legal assistance program be implemented with the necessary laws. The Advocates (Amendment) Bill was proposed in the Rajya Sabha on August 18, 1970, and it transferred the burden of providing legal aid to the shoulder of Bar Council to assist the underprivileged without requesting government funding. Meanwhile, committees for legal assistance have been established in many states, including Tamil Nadu, Madhya Pradesh, and Gujarat, to carry out the legal aid and service initiatives. The Madhya Pradesh government was the first in the state to enact the "Legal Aid and Advice Act, 1976" in response to the Committee's suggestion.

Swaran Singh's Committee Report:

A committee on constitutional amendments was established in 1975 by the All India Congress Committee, with Mr. Swaran Singh, a former Union Minister, serving as its head. The committee recommended that Legal Aid be added as a new Article in the Directive Principles of State Policy

when it delivered its report in 1976. By virtue of the 42nd Amendment to the Constitution, a new Article 39-A was added to the list of Directive Principles of State Policy. The Union Government should form a national committee to create an appropriate legal assistance program, according to the National Forum's recommendation. In response to the interest expressed by the National Forum, the Government of India established a "Committee on Juridicature" on May 19, 1976, presided over by Mr. Justice P.N. Bhagwati, Judge, Supreme Court of India. The committee's duties included considering the issue of legal aid to underprivileged groups within the community, evaluating the scope and nature of unmet legal needs for those in low-income situations, evaluating the efficacy of the legal aid program currently in place in the nation, and formulating recommendations for the creation and management of comprehensive and dynamic legal service programs for the effective planning.

Conclusion

The prevalent causes include the general lack of knowledge regarding the operation of the Indian legal system, the exorbitant fees that attorneys charge, and the lengthy courtroom adjudication procedures that severely hinder access to justice. Hypothesis is analysed and suggestions are provided. One fundamental right that is necessary to sustain an equitable and democratic society is access to justice. The lack of physical presence in virtual courts can also impact the human element of judicial proceedings. Non-verbal cues, body language, and face-to-face interactions play a significant role in the courtroom, influencing the perception and interpretation of testimonies and evidence. Virtual courts may struggle to capture these nuances, potentially affecting the quality of justice delivered. To mitigate this, virtual court platforms should strive to provide high-quality video and audio capabilities, ensuring clear and effective communication between participants.

Additionally, procedural fairness must be upheld in virtual courts. All participants should have equal opportunities to present their case, cross-examine witnesses, and provide evidence. Judges should ensure that the virtual format does not disadvantage any party and that the principles of natural justice are maintained throughout the proceedings. Virtual courts have the potential to significantly enhance

access to justice and promote the ends of human rights by eliminating geographical and physical barriers, reducing case backlogs, and promoting inclusivity. However, several challenges must be addressed to ensure that virtual courts do not inadvertently create new barriers or exacerbate existing disparities. Investing in digital infrastructure, ensuring privacy and security, maintaining fairness and impartiality, and preserving the human element of judicial proceedings are crucial steps in realizing the full potential of virtual courts. By addressing these challenges, virtual courts can play a vital role in ensuring that access to justice is upheld and that human rights are protected in the digital age.

Notwithstanding the obstacles, there are things that may be done to make sure that everyone has better access to the judicial system. These include sponsoring legal aid programs, expanding internet resource accessibility, and trying to make the court system more user-friendly. By doing these things, we can contribute to making sure that everyone is able to assert their legal rights and file complaints.

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