

Is the Indian judiciary prepared for technological revolution finally? A critical analysis of judicial functioning in the COVID world

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Abstract

W. E. Gladstone, said in 1800s that “justice delayed is justice denied”. This notion of testament has its epistemological universality and applicability even in the present times. The reasons for the delay in justice become irrelevant, if such deferral leads to an unjust end, fettering the notion of justice. However, in light of ‘humanitarian emergency’, the delay in justice by the judicial system could only be justified if appropriate preparedness and all the measures for mitigation of the risk have been undertaken; in the void of such preparedness and mitigation strategies, the delay in justice tends to be unjustified. Judicial disposal in India faces a lot of pendency and an overload of cases that ought to be dispensed by the courts. This situation became worse when the pandemic hit the country in 2020. However, the judicial system adopted the modes of technology in order to modernize and digitalize the functioning of courts during Covid-19. Such adoption by the judicial branch lacked preparedness unlike other branches such as the legislative and the executive, which modernized and digitalized in a piecemeal manner. Quick adoptions, turned out to be a boon for judicial functioning to an extent, but there remain certain challenges that are yet to be addressed. It is in this light the present study attempts to analyze the impact of covid-19 on the functioning of the judicial system in India, which eventually led to the effective dispensation of justice while retaining certain challenges which are to be addressed.

Keywords: COVID-19, E-courts, Humanitarian Emergency, Judicial System, Online/virtual hearing, Pandemic.

I. INTRODUCTION

The functioning of the judiciary and dispensation of justice would have not been possible if the adoption of technology in order to modernize and digitalize the same remained oblivious during the ongoing Covid-19 pandemic. In fact, the said unprecedented situation due to Covid-19 and the role played by the technology paved the way for modernizing the smooth functioning of the judiciary in present times. In order to visualize the impact of such modernization and

digitalization, the Hon’ble Apex Court opined that “the system of Video Conferencing has been extremely successful in providing access to justice”. Further, the Parliamentary Committee in its one hundred-third report strongly recommended the continuation of the functioning of virtual courts and its extension to other judicial / quasi-judicial bodies. The noted transformation restored several challenges such as that the functioning of the Court has always been physical and the stakeholders of the judiciary i.e. judges,

advocates, court staff, clerks and litigants were not at all familiar with the online and virtual functioning of the Court. The majority of them had never heard of the online and virtual functioning of the Court prior to COVID-19. However, such transformation in light of the technology used and method of functioning followed during Covid-19 and its improvements in future days to come led to be a valuable asset for the judicial system to function eco-friendlier and without any delay in coming years. It has been identified that speedy justice is not merely possible but also accessible in wake of such modernization. The right to speedy justice is held to be the fundamental right of citizens under Article 21 of the Constitution of India. The fundamental rights of citizens envisaged under Articles 20 and 21 of the Constitution cannot be suspended even during a time of emergency. However, it is true to say that the pandemic tends to be a real-time threat to the enforcement of said fundamental rights of citizens. It is unfortunate to say that such a pathetic situation arose during the pandemic time mainly due to the reluctance of the stakeholders to modernize the functioning of the judicial system as they are all comfortable and convenient in the regular manual physical functions of the court at courtrooms. It reflects that when the 'humanitarian emergency' in the name of Covid-19 emerged, the judicial system quickly adopted to modernize and digitalize which earlier was only an envisaged venture to be taken upon. It is in this light the present study attempts to analyze the impact of covid-19 on the functioning of the judicial system in India, which eventually led to the effective dispensation of justice while retaining certain challenges which are to be addressed. The research objectives were as follows:

- To study the impact of COVID-19 on the functioning of the judicial system.
- To understand the relevance and importance of modernization and digitalization of the judicial system.
- To identify the benefits availed by various stakeholders such as judges, litigators,

litigants, etc., in wake of modernization and digitalization of the judicial system.

To address the challenges in further implementation for the effective maximization of such modernization and digitalization.

2. Impact of COVID-19 on the Functioning of the Judicial System

In early 2020, World Health Organization (WHO) officially announced that the threat of the COVID-19 pandemic was going to last for at least a few years. Declaration of lockdown and restriction of movements except for essential commodities and services has been widely adopted as an emergent measure to curtail the super spread of the pandemic.

With regards to the judiciary, it is true that the Court mechanism in India never thought of such a situation and a real problem arose regarding the functioning of the court mechanism as it had been fully based on manual physical proceedings in courtrooms. However, the usual conventional physical functioning of the courtrooms was not at all possible at the time of the pandemic and the system had no other option except to go for the online and virtual mode to conduct its daily court proceedings. The Court, as an immediate response to the real-time threat of Covid-19, limited its functioning to urgent reliefs, and all other matters were ordered to be kept in en-bloc. Hence, all other matters such as recording of evidence and final arguments were categorized as non-urgent matters and got adjourned indefinitely and the court was entertaining only urgent interim applications like applications seeking a stay, an application seeking injunctions, applications seeking bail, etc. The Hon'ble Apex Court ordered the record of the proceedings and to implement its said decision throughout the country. However, its implementation has not yet been fully completed across the country due to the time taking affairs of procurement and installation of costly devices for all the courts in the country. But the online hearing and virtual functioning of the court during the

ongoing Covid-19 made it possible with no additional costs.

At the same time, it is to be noted that there have been many challenges in light of filing, listing, and hearing the matters before the Courts across India. Firstly, the stakeholders of the judiciary i.e. judges, advocates, court staffs, clerks, and litigants were new to the online hearing and virtual functioning of the Court and never thought of such a situation that emerged due to the pandemic. Secondly, the Court functions were limited to urgent reliefs, and all other matters were ordered to be kept in en-bloc then. Thirdly, from the point of view of stakeholders of the judicial system, their lack of technical know-how, lack of interaction with the client at court, closure of their office due to lockdown, non-availability of case files at their residence, non-availability of adequate internet facility at home, lack of self-satisfaction either due to the adoption of online mode of hearing or due to non-exposure in online hearing comparing that of the physical hearing at courtrooms, etc. remained as a time taking affair to be addressed and it may have remained as a stumbling block for the immediate modernization and digitalization of the judicial system. Fourthly, the filing of matters has always been done manually during the pre-pandemic period and hence the hard copy of the file was only available for the online court hearing. Hence the stakeholders including the Judges, Lawyers, and staff often felt extreme difficulty to arrange and put up the files, especially the bulk files for such online hearings. Further, once the matter is drafted, lawyers generally entrust the work of filing and listing the matter for hearing to their clerks as they were trained up and familiar with the manual physical filing of the matter. Then the court introduced digital filing of matters and it couldn't become popular among the lawyers as they have not provided with adequate training. In addition, there were also several technical issues at the time of digital filing that were also not adequately addressed. Lastly, the number of filing fresh cases during the relevant period of COVID-19 was substantially got reduced mainly due to the extension of the period of limitation by the Apex Court . In addition to the

above, the prevailing pandemic and its consequent restrictions also resulted in a reduction in the filing of fresh cases. The category of filing of the fresh cases shows that majority of them were filed as the party was in the requirement of urgent reliefs.

The major challenge, which pervades post the pandemic is regarding the existing knowledge gap pertaining to the matters which were categorized as non-urgent matters then. Further, there is a clear-cut knowledge gap regarding how to utilize the beneficial side of online and virtual mode technologies adopted in recent times for the effective speedy function of the judicial system in its future days.

3. International Perspectives on 'Humanitarian Emergency' and Reforms in Judicial Functioning

The impact analysis of 'humanitarian emergency' on one hand and the modernization and digitalization of the judicial system, on the other hand, reflects globally that preparedness and mitigation of risk must be endowed as a primary concern of policymaking.

In that light, well-known and widely read author Richard Susskind, systematically explained the need for the conventional court to switch over to modern technology and to function via online mode as an easy means to enable 'everyone' to have access to the justice system. It has been explained to him how everyone can have easy access to justice in the era of the internet without facing the trauma and trouble of delayed working of conventional physical courts. Thus, Richard Susskind urges "legal professionals to ask themselves what elements on their workload could be undertaken more quickly, more cheaply, more efficiently or to a higher quality using technology and different working methods" .

The need for emergency management in the Court in the backdrop of the September 11 attack in 2001 and Hurricane Katrina in 2005 which hit the functioning of the Court system very hard in those times has been highlighted. During September 11 attack, most courts in the

affected area closed for three business days; many personnel, public access, and communications problems remained affected for some weeks after the disaster and the attack destroyed New York Courts' Emergency Operation Centre. Additionally, Hurricane Katrina was the most destructive natural disaster in the history of the United States and it rendered many court facilities in New Orleans and surrounding areas to remain perishable, unusable, or inaccessible for more than a year. There were substantial problems with holding suspects, maintaining evidence, or conducting even routine court business. Hence, it had blown the whistle amongst the stakeholders of the judicial system and it has been insisted them on the requirement of effective leadership, prioritizing the matters for hearing during the emergency, uninterrupted advanced communication systems and most essentially Continuity of such Operation Plan (COOP) to be adopted during such emergency situation by taking into consideration "the probability of such an event happening sometime in the next thirty or fifty years is often very high, and have no way to predict when such an event will strike next."

Dr. Mary C. Lacity narrates in detail the successful technological adaption and implementation of innovative ideas in practice made by the Radiant Law firm in the United Kingdom to face the challenges of Globalization. She states "Radiant Law's story testifies that even the privileged professions, like law, may well need a rethink, and must continually adjust if they are to survive in an increasingly technologically-enabled and globalized economy."

We see that the global views reflect the necessity to equip and adopt preparedness and risk mitigation measures for unanticipated 'humanitarian emergencies', with the help of modernization and digitalization.

4. Importance of Modernization and Digitalization of the Judicial System

In 'humanitarian emergencies' such as ongoing pandemics, floods, earthquakes, tsunamis,

cyclones, etc., states may be compelled to declare lockdown/evacuation which literally stalls the functioning of all industrial activities and movement of individuals. But even at the time of declaring such an extreme emergency, the functioning of pillars of democracy especially that of the judiciary cannot be shut down. Hence, when such challenges and calamities come, there is a real threat to the health of individuals who cannot be permitted to go out. The ongoing pandemic demanded everyone to follow its protocol including the new normal of isolation, quarantine, etc. and the same are essential and inevitable to save the life and limb of individuals in the present times.

Therefore, it is to be noted that covid-19, in a way, offered an opportunity for all the stakeholders of the judicial system to train themselves and to be equipped with modern technologies for the effective dispensation of justice. So, the judicial system ought to adopt the beneficial usage of modern technology to ameliorate the impact of covid-19 and its continuation in a better fashion for the post-pandemic period as well. The online and virtual hearing not only saved the time of stakeholders of the judicial system but also substantially reduced the cost of functioning of the judicial system as a whole, which also includes ancillary eco-friendly impacts like less usage of paper, fuel, etc.

Even, the Parliamentary Committee in its one hundred-third report dated 11th September 2020 on the functioning of virtual court proceedings through video conferencing (interim report) opined that "introduction of Virtual Courts would result in an improvement over traditional Courts as they are more affordable, citizen-friendly and offers greater access to justice. They yield substantial savings in costs for both individual litigants and Courts. Traditional Courts, by and large, are accessible to very few people and even then only at disproportionate expense and effort, Virtual Courts can help overcome these injustices". Thus, the Committee recommended continuing with the functioning of virtual courts in all the courts even during the non-pandemic time.

4.1 COVID-19 and the Stakeholders of the Judicial System

It is to be noted that due to the prolongation of the ongoing pandemic, the stakeholders of the judiciary got trained up for online hearings and the majority of them felt that the online mode of hearing is apt, convenient, and comfortable for certain categories of cases like in those matters which only require the reporting/entering appearance before the court on receipt of summons and in such other matters which are fixed for completion of pleadings and for interim hearing. In fact, the Hon'ble Apex Court opined that "the system of Video Conferencing has been extremely successful in providing access to justice."

The practice of serving the other side and filing pleadings in pending matters via e-mail / WhatsApp - to the authorized person/court master has come into the daily function of the court since then. It is to be noted that the virtual mode of hearing is a sigh of relief for lawyers whose daily travel time to attend the courts has been reduced to 3 to 4 hours in metro cities like Delhi. Moreover, a lawyer could attend to many more matters in different district courts of other states as well, while being in one place. Thus, the virtual hearing and technology literally showed the judiciary especially lawyers during the pandemic that the time and distance are not a matter at all for their functioning. In addition to the above, it gave judges and especially lawyers more working hours and gave them quality time for work in comparison to physical court functioning.

Interns and junior lawyer/court officers who landed up in the profession recently also felt at ease in addressing the court via online mode unlike their appearance in presence of other senior lawyers in physical courtrooms earlier. They felt that there was a serious conversation on the subject between them and the judge rather than a stage performance before a crowded audience in courtrooms. Online hearings also enabled them to watch and learn the court proceedings before various High Courts and Apex Court at no cost. In physical mode, a junior lawyer had to arrange the

entrance pass for attending the hearing in high courts and the Supreme Court.

4.2. In Light of the Pendency of Cases

The delay in the functioning of the judiciary in India has remained infamous and widely criticized by all critics. Despite such criticism, there had been no major change witnessed in the functioning of the judiciary except during the period of a COVID-19 pandemic. The online functioning of the judicial system during the intermittent lockdown periods showed that distance remains an immaterial factor in its functioning during the pandemic period; which eventually highlighted the scope and relevance of modernization and digitalization of the judicial system.

It is to be noted that, litigation, as a conventional mode, is no more a better way to get speedy justice as the average life span of a case in India is learned to be 15 years. As a matter of fact, the conventional justice system suffers various imperfections and disadvantages such as hyper technicalities, delays, etc. There is a huge pendency of cases before the Courts in India. As of 01.04.2022, there are 70,632 cases pending in the Supreme Court, and as of December 2021, the number of pending cases in the Hon'ble High Courts is 56,40,641 and there are 4,06,72,366 cases pending before Ld. District Courts in India. Conventional litigations now remain an adversarial method of dispute resolution. There lies the importance and scope of adopting modern technology for the effective speedy eco-friendly functioning of the judicial system with less cost.

5. A Way Forward

The main issue for the smooth functioning of the judicial system while adopting modern technology concerns the urgent requirement of strengthening the framework of a unified e-filing system and digitalization at District Courts. It is to be noted that adequate periodic training sessions are required to be arranged for the stakeholders to enable them to comfortably carry out the e-filing and virtual hearing.

It has been realized that there is a requirement of adoption of advantages of online and virtual functioning of the court thereafter to set up a uniform style of functioning of the District Courts across the country. Thus, for future hearings, a hybrid system of functioning of the court at the district level in a routine manner is the need of the hour. To implement the same effect, categorization of cases and allotment of time schedule for each mode of hearing i.e., physical and virtual, is the most important factor. It means a unified procedure for such hybrid functioning of the court is highly essential and needs to be implemented.

As part of the suggestion, for categorizing the cases and allotting a time schedule; a physical final hearing and online miscellaneous hearing could be done during the pre-lunch session of the court, and the other two categories i.e. evidence and other miscellaneous matters for appearance/completion of pleadings, etc., could be done during the post-lunch session of the court unlike in pre-pandemic period. The said time slot system for daily online, hybrid and physical functioning of the courts will not only save the time and energy of many but also helps in the effective utilization of all the manpower involved in the daily judicial function of the system. Thus, it helps in accomplishing the right to get speedy justice as a fundamental right for every citizen of the country in the practice and functioning of the courts. The interim report submitted by the parliamentary committee also calls for more study about the categorization of cases and mode of hearing for the effective functioning of virtual courts across the country. It also suggested a mixed-mode of hearing which is termed a hybrid mode of hearing of the matters before the courts.

Modernization and digitalization of the judicial system in the country had remained at the speed of a snail and all the said chaos could have easily been avoided if the judicial system would have systematically implemented its digitalization process during the pre-pandemic period like any other wing/sector of the government.

6. Suggestions and Conclusion

Based on the research analysis above, the following suggestions ought to be incorporated in a timely manner for the maximum utilization of the undergoing transformation of the judicial system in India:

- Adoption of modern technology to face future challenges of any possible ‘humanitarian emergencies’.
- Modernization and digitalization of judicial functioning to improve its efficiency and functioning.
- Adoption of technology to reduce the pending litigations.
- Enable the judiciary to be eco-friendlier in its functioning.
- Quality utilization and management of working hours of the Courts.
- Impart modern technical education to the law student to equip them with the modern functioning of the judiciary.
- Categorize the pending cases for the effective hearing before the Court.

This will save the time of the stakeholders and save the cost of functioning of the judiciary. In light of the above suggestions, it is to be noted that the environmental harms due to wastage of papers and other natural resources would be substantially reduced once the court functions are digitalized fully with the usage of modern technology. It is also high time for the inclusion of a practical technical syllabus of e-functioning of the court as part of the curriculum, especially as part of the practical sessions of the LLB course. The suitable session for teaching such a technical part is the end semester of the course as the students are required to carry out regular court visits as part of their curriculum to observe and learn the practical side of the legal profession.

The judicial system is not at par with other wings of the state machinery in terms of modernization and adoption of technology and it requires to undergo a sea change both in terms of its daily functioning and in terms of

technological advancement. The post COVID era is the right time and opportunity for advancing towards achieving the fundamental goals of law such as transparency and speedy justice through the use of modern technology. Adversity is also an opportunity.

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