International Journal of Intellectual Property Rights (IJIPR)

Volume 14, Issue 1, Jan-June 2024, pp. 8-16, Article ID: IJIPR_14_01_002 Available online at https://iaeme.com/Home/issue/IJIPR?Volume=14&Issue=1

ISSN Print: 0976-6529, ISSN Online: 0976-6537

Impact Factor (2024): 14.25 (Based on Google Scholar Citation)





ACCESS TO JUSTICE DURING COVID-19 PANDEMIC: ROLE OF TECHNOLOGICAL INTERVENTIONS

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ABSTRACT

COVID-19, one of the worst crisis in the human history, has affected not only the soci-economic and political set up globally. It has also created a vacuum in the justice delivery system across the world. Given that norms of social distancing and lockdowns have adversely affected the quest for justice, especially in the countries like India, the huge pendency of cases has added fuel to fire.

In this regard, the role of the honorable high courts and the Supreme Court cannot be ignored, inasmuch as they came out with detailed guidelines for promoting access to justice during pandemic.

One of the peculiar features of the working of courts during the pandemic has been the emphasis on technological interventions, such as video-conferencing, e-Lok Adalats, etc., by the courts and other authorities.

In this paper, the authors seek to study and elaborate the role of technological interventions in promoting access to justice during COVID-19 pandemic.

Keywords: Access To Justice, Technology, Video-Conferencing, Covid-19, Disaster.

Cite this Article: Anoop Kumar and Aarushi Batra, Access to Justice During Covid-19 Pandemic: Role of Technological Interventions, *International Journal of Intellectual Property Rights (IJIPR)*, 14(1), 2024, 8-16.

https://iaeme.com/Home/issue/IJIPR?Volume=14&Issue=1

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"The corona virus disease 2019 (COVID-19) pandemic has further exposed and exacerbated inequities in our justice system, as courts and legal service providers have been forced to curtail in-person operations, often without the resources or technology to offer remote-access or other safe alternatives. These access limitations have compounded the effects of other harms wrought by the pandemic. These problems have touched the lives of many persons in this country, particularly low-income people and people of color"³.

Joseph R. Biden, the President of the USA.

INTRODUCTION

In the quest for equality, fairness and protection of rights of people, the term "justice" has achieved a special significance for the post 20th century world. Value of justice is more than that of food for a hungry person or treasure for an indigent. Therefore, it is the dream of justice that every nation wants to fulfill.

Considering its utmost essence, the term justice has been given a paramount place in the Constitution of various countries, especially in their Preambles. The ambit of the term "justice" as mentioned in the Preamble of the Indian constitution covers "social, economic and political"⁴. On the other hand, object of justice in the Preamble of the US Constitution seeks to "establish Justice" for establishment of more perfect Union. Coming to the Constitution of the major Asian countries, the Preamble of the Constitution of Japan, for example underlines the trust of Japanese people in "the justice and faith of the peace-loving peoples of the world".

Thus, even though the ambit and object of justice may differ in the Constitutions of the world, the significance of the term has never been overlooked by them. Further, the justice finds special place even at the international platform inasmuch as the Sustainable Development Goal 16 seeks to provide access to justice for all⁷.

According to Aristotle, justice takes into its ambit a conduct in agreement with law. In his opinion, justice can be classified into two categories: distributive justice and corrective justice⁸. Further, in his opinion, all lawful and fair acts are to be considered just as opposed to all unlawful and unjust acts, which are to be treated as unfair⁹.

In the wake of the mandatory social isolation measures the justice systems and legal aid agencies across the world have been motivated to invest in the use of technology in order to avoid face-to-face contact¹⁰. Various supportive technologies have been adopted by courts, which facilitate video conferencing as well as exchange of documentation through web-based platforms such as *Teams*, *Skype*, *Zoom*, *Google Hangouts* and *WebEx*¹¹.

³ Access to Justice in the Age of COVID-19, https://www.justice.gov/ag/page/file/1445356/download

⁴ Preamble to the Indian Constitution.

⁵ Preamble to the US Constitution.

⁶ Preamble to the Japanese Constitution.

⁷ The SDG: 16 is about "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".

⁸ Aristotle, Nicomachean Ethics, ARISTOTLE'S COLLECTION 29 BOOKS (W. D. Ross Transl. Kindle Edition, 2007).

⁹ Id.

¹⁰ Global Access to Justice Project, Impacts of COVID-19 on Justice Systems, https://globalaccesstojustice.com/ impacts-of-covid-19/#overview

¹¹ Tania Sourdin, Bin Li, and Donna Marie McNamara, Court innovations and access to justice in times of crisis, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7456584/#!po=15.4412

Given that in the early March of 2020, the Ministry of Home Affairs (MHA), Indian Government declared Covid-19 as a "notified disaster" there has been a severe impact on the justice delivery system across the world. However, to cope with the gap in access to justice, the governments across the world have opted for technological interventions such as e-courts, Online Dispute Resolution (ODR), virtual courts etc.

The honorable Supreme Court has recognized the role of technology in strengthening justice system in the case of *Swapnil Tripathi v. Supreme Court of India*¹³. Further, in the landmark case of *Re. Guidelines for Court Functioning Through Video Conferencing During. Covid-19 Pandemic*¹⁴ it observed that:

"Modern technology has enabled courts to enhance the quality and effectiveness of the administration of justice. Technology has facilitated advances in speed, accessibility and connectivity which enable the dispensation of justice to take place in diverse settings and situations without compromising the core legal principles of adjudication" ¹⁵.

ACCESS TO JUSTICE: DEFINITION AND RECOGNITION.

In the opinion of the United Nations the term "access to justice" signifies "a basic principle of the rule of law"¹⁶. Neglect of such principle may entail not only suppression of the voice of people, but it may lead to their inability to exercise their rights, to deal with discrimination or hold decision-making authorities accountable¹⁷.

Merely, enacting provisions for ensuring justice is not enough and goes in vain in absence of the means to provide access to it. Therefore, accessing justice stems from the concept of justice itself. Every right must be followed by its protection is enshrined in the Latin maxim *Ubi jus, ibi remedium*. The same has been emphasized very early in *Ashby v. White* ¹⁸, wherein it was rightly observed by the Chief Justice of the King's Bench that imagination of a right without remedy is a vain thing.

The Magna Carta (1215) also ensured access to independent and impartial justice¹⁹. apart from it, articles 8 and 10 of the Universal Declaration of Rights (UDHR) recognizes following rights pertaining to 'access to justice':

"Art.8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Art.10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him."

Protection to the right of access to justice is not of recent origin. It has been recognized in Raymond v. Honey²⁰.



¹² The Economic Times, *India declares Covid-19 a 'Notified Disaster'*, https://economictimes.indiatimes.com/ /news/politics-and-nation/india-declares-covid-19-a-notified-disaster/articleshow/74631611.cms.

¹³ (2018) 10 SCC 628.

¹⁴ (2020) 6 SCC 686.

¹⁵ Id. para 3.

¹⁶ Access to Justice, United Nations and the Rule of Law, https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ (last visited Feb 12, 2023).

¹⁷ Id.

¹⁸ 92 Eng. Rep. 126 (K.D. 1703).

¹⁹ Magna Carta: A vision of justice and freedom, https://www.ruleoflaw.org.au/magna-carta-a-vision-of-justice-and-freedom/

²⁰ 1983 AC 1 (1982 [1] All ER 756.

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In some of the other notable verdicts such as R v. Secretary of State for Home Dept., ex p $Leech^{21}$, the Court recognized the right of citizen to "unimpeded access to a court". Other such judgments are Re: $Llewelyn Evans^{22}$, Delcourt v. $Belgium^{23}$,

The protection of the right to accessing justice has also been recognized in India²⁴. Prior to the Independence, in cases like *P.K. Tare v. Emperor*²⁵. In order to extend the protection to this right, the honorable Supreme Court in its various decisions such as *Hussainara Khatoon v. State of Bihar*²⁶, *Katar Singh v. State of Punjab*²⁷, *Suk Das v. Union Territory of Arunachal Pradesh*²⁸, *M.H. Hoskot v. State of Maharashtra*²⁹, *Abdul Rahman Antulay v. R.S. Nayak*³⁰, *Sheela Barse v. Union of India*³¹, *L. Chandra Kumar v. Union of India*³², *Tamilnad Mercantile Bank Shareholders Welfare Association v. S.C. Sekar and Others*³³, *Imtiyaz Ahmad v. State of Uttar Pradesh & Ors.*³⁴, *Brij Mohan Lal v. Union of India and Ors*³⁵, has recognized this right as an essential aspect of Article 21 of Indian Constitution.

In a recent landmark judgment of *Anita Kushwaha v. Pushap Sudan*³⁶, the honorable Supreme Court has reiterated access to justice as a facet of fundamental rights guaranteed under article 14 and 21 of the constitution of India. The Court recognised access to justice as a "part and parcel of right to life in India and in all civilized societies around the globe"³⁷.

In this case the honourable court held that following are facets of 'access to justice'38:

- 1. Duty of the State to provide an effective adjudicatory mechanism;
- 2. Such adjudicatory mechanism must be reasonably accessible in terms of distance;
- 3. The adjudication process must be speedy; and
- 4. The litigant must have an affordable access to the adjudicatory process.

ACCESS TO JUSTICE DURING COVID-19

The problem of accessing justice system existed prior to the COVID-19 pandemic. It can be gathered from the report Global Insights on Access to Justice 2019: Findings from the World

²¹ 1993 [4] All ER 539.

²² AIR 1926 Bom 551.

²³ 1970 ECHR 1.

²⁴ See Re: Llewelyn Evans AIR 1926 Bom 551; P.K. Tare v. Emperor AIR 1943 Nagpur 26; Re Keshav Singh, AIR 1965 SC 745;

²⁵ AIR 1943 Nagpur 26.

²⁶1979 AIR 1369, 1979 SCR (3) 532.

²⁷1994 SCC (3) 569, JT 1994 (2) 423.

²⁸ (1986) 2 SCC 401.

²⁹ (1978) 3 SCC 544.

³⁰1988 AIR 1531, 1988 SCR Supl. (1) 1.

³¹ (1988) 4 SCC 226.

³² (1997) 3 SCC 261.

³³ (2009) 2 SCC 784.

³⁴ (2012) 2 SCC 688.

³⁵ (2012) 6 SCC 502.

³⁶ AIR.2016.SC.

³⁷ Id. at para 26.

³⁸ Id., at para 30.

Justice Project General Population Poll in 101 Countries³⁹. The report revealed that less than one-third people, who had faced a legal problem, sought any form of advice for better understanding or resolving their problems⁴⁰. To add fuel to fire, even fewer (17%) of them took recourse to an authority or third party for mediation or adjudication of their problems⁴¹.

The peculiar reality of the responses varied as some parts of the justice system experienced an increase in workload, whilst others saw a reduction in demand. For example, there was increased demand in the criminal justice sector to reconsider bail and remand arrangements (so that, where possible, prison populations could be reduced) [1], as well as an increased focus on domestic violence and family arrangements including a significant increase in the need for court orders relating to child custody [2]. At the same time, there has been some decline in parts of the litigation system as economic activity decreased and takeovers, mergers and new contractual arrangements were not a focus of activity.

Globally, the problems of dramatic surge in violations of rights of women, children and other marginalized groups due to measures requiring people to remain confined to their homes have been highlighted by various reports⁴². The states have responded to the pandemic by resorting to measures such as closure of Courts, reduction, or adjustment in their operations, which are bound to have following repercussions:

- 1. It will have not only adverse impact on the provision of timely and fair hearings, but which will tend to accentuate case backlogs, and also lead to increased length of judicial and administrative proceedings⁴³.
- 2. The risk of violence faced by certain groups, including women and children is bound to surge. Also, such measures will severely impact juveniles, undocumented migrants, refugees, and asylum seekers, and those in migrant detention centres⁴⁴.
- 3. Reduced court operations will lead to postponed parole hearings, which will consequently cause the prolonged detention of pretrial detainees or of prisoners eligible for early release⁴⁵.
- 4. In the absence of judicial oversight, apprehension remains that persons detained due to emergency measures for containing spread of the virus may not be brought before a judge in a time-bound manner⁴⁶.

⁴¹ Id.

⁴⁵ Id.

³⁹ World Justice Project, https://worldjusticeproject.org/our-work/research-and-data/global-insights-access-justice-2019.

⁴⁰ Id.

⁴² UN Women, *UN Secretary-General's Policy Brief: The Impact of COVID-19 on Women*, https://www.unwomen.org/en/digital-library/publications/2020/04/policy-brief-the-impact-of-covid-19-on-women

UNODC, Ensuring Access to Justice in the Context of COVID-19, https://www.unodc.org/documents/Advocacy-Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf

⁴⁴ Id.

⁴⁶ Id.

Even in the country like USA, on one hand, the COVID-19 pandemic has exposed structural inadequacies in the civil justice system. On the other hand, it has also nearly crippled the criminal justice system, as every stage of law enforcement involves close physical interaction⁴⁷.

Problems faced by the Indian Justice System during Pandemic: The research conducted by Prof. Upendra Baxi revealed that Indian justice system suffered to plug the gap in access to justice due to following reasons:

- 1. In the Indian context, due to lockdown and the resultant the lack of transportation services, contamination of public areas, and fear of disease prevented people from having recourse to police stations⁴⁸.
- 2. There was also found to be absence of sustainable support systems to help people in reaching out to police or courts for remedy of their grievances⁴⁹.
- 3. To add fuel to fire, the online facility of FIRs was also inadequate inasmuch as of 317,439 complaints of cyber-crimes, only 5,771 FIRs were filed⁵⁰.
- 4. After suspending the in-person matters, the courts opted for virtual hearings that too in the matters of "extreme urgency" on recommendations of the 103rd report of the Parliamentary Standing Committee. However, hardly there was any consensus on ambit of urgency⁵¹. Decision as to the "urgency of a case" was to be made by the presiding judge, which led to arbitrariness as highlighted by the Bar Council of India in its letter to the Chief Justice of India, complaining that only 2% of the cases filed under the "urgent" category were listed for a virtual court hearing⁵².
- 5. Though the courts opted for virtual courts. Its effectiveness was marred by lack of civilian digital literacy, poor quality of internet access, power cuts, inadequate audio and video facilities, and other technological glitches⁵³.
- 6. Though Article 39A of the Indian Constitution makes provision for free legal aid to the weaker section of society, thereby ensuring justice to all⁵⁴. It has been revealed in the Research that unlike pre-pandemic period, when the problem with free legal aid was the under-utilization of resources allotted for it, the deficient state funding caused by the devastated economic condition prevented free legal aid⁵⁵.

TECHNOLOGICAL INTERVATIONS

Of the various measures to plug the gap in accessing justice system, technology can leveraged to a great extent in following manners⁵⁶:

Id.
 Id.
 UNODC, Ensuring Access to Justice in the Context of COVID-19, https://www.unodc.org/documents/Advocacy-Section/Ensuring Access to Justice in the Context of COVID-191.pdf

⁵³ Id.

⁴⁷ Access to Justice in the Age of COVID-19, https://www.justice.gov/ag/page/file/1445356/download
A. ⁴⁸ Amartya Sahastranshu Singh and Atika Chaturvedi, COVID-19's Unseen Impact: How Access to Justice in India is Suffering, http://www.fletcherforum.org/the-rostrum/2021/8/25/covid-19s-unseen-impact-how-access-to-justice-in-india-is-suffering

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

- 1. It can used in online procedures to file cases;
- 2. Granting legal recognition of electronic evidence or evidence presented by electronic means will help courts to conduct trials easily; and
- 3. Electronic case file and evidence management systems can be established.

To that extent, the governments across various countries have opted for various technological interventions to meet the aspiration of accessing the justice system.

Global Practices. Some of the global practices can be studied in this section.

USA. Like in other parts of the world, the courts of the USA also switched to virtual services in order to allow litigants in resolution of legal problems, helping negotiation settlements, filing documents, and conducting hearings remotely⁵⁷. Some examples of the Federal support for virtual services are as under:

- 1. Several factors have been identified by **the Administrative Conference of the United States (ACUS)**, which are to be considered by agencies in order to determine feasibility of remote hearings⁵⁸. These factors also help in avoiding danger of adverse case outcomes emanating from video teleconferencing and tend to resolve issues pertaining to costs, productivity, wait times, or access to justice⁵⁹.
- 2. Virtual platforms have been expanded by **the Equal Employment Opportunity Commission (EEOC),** which facilitates provision of information in rural and remote areas and also assures enhancement of access to the discrimination charge process.
- 3. For providing remote hearings and services for Tribal courts, **the Department of Interior (DOI)** has funded technology improvements with the same objective.
- 4. A virtual technical assistance has been developed by **Department of Justice (DOJ) Office on Violence Against Women (OVW).** It has also developed guidance about virtual services for victims of crime⁶⁰.
- 5. A centralized online **Civil Rights Reporting Portal** has been set up by the DOJ, which helps victims to file complaints. It has eased the burden of reporting for those from the Asian American and Pacific Islander community who have faced bias-related incidents during the pandemic⁶¹. This portal is available in various languages such Spanish, Traditional and Simplified Chinese, Korean, Vietnamese, and Tagalog⁶².
- 6. The DOJ, through its **Federal Government Pro Bono Program (FGPBP)** has come ahead to provide virtual assistance during the pandemic.
- 7. DOJ's Service-members and Veterans Initiative (SVI) collaborated with **the Department of Defense's (DOD)** Yellow Ribbon Program, SVI to organise virtual

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⁵⁷ Access to Justice in the Age of COVID-19, https://www.justice.gov/ag/page/file/1445356/download

Administrative Conference of the United States, *Virtual hearings in agency adjudication*. https://www.acus.gov/recommendation/virtual-hearings-agency-adjudication 59 Id.

⁶⁰ American Bar Association. *COVID-19 resources for communities*, https://www.americanbar.org/groups/domestic_violence/Initiatives/covid-19/. Technical Assistance Provider Resource Center. *Resources*. National Council of Juvenile and Family Court Judges. https://ta2ta.org/resources-and-information-on-covid-19-response/attorneys.html

⁶¹ U.S. Department of Justice. Contact the Department of Justice to report a civil rights violation. https://civilrights.justice.gov/report/

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- events for service members and their families to spread awareness of Federal employment and financial rights of such members.
- 8. **DOD's** organized several legal assistance programs to provide civil legal assistance, including virtual assistance, to current and former members of the armed forces and eligible family members. Such assistance pertains to family law matters and protection from consumer scams and predatory debt collectors⁶³.
- 9. **The National Science Foundation (NSF)** has extended its support to projects, which aimed at analysis of the impact of the COVID-19 pandemic courts across the nation⁶⁴. NSF has also supported in the creation of the first-ever online civil justice data commons aimed at creating more transparent and efficient civil legal systems⁶⁵.
- 10. Virtual options have been provided to the claimants by the **Social Security Administration (SSA)** for facilitating appearing at administrative hearings and for receiving and reviewing evidence related to their claims⁶⁶.

<u>https://www.oecd.org/governance/global-roundtables-access-to-justice/access-to-justice-compendium-of-country-practices.pdf</u>

Indian Scenario.

E committee newsletter e-courts report guidelines in Re Guidelines in VIRTUAL COURTS.

The use of technology found judicial recognition in precedent of this Court in *State of Maharashtra v Praful Desai*⁶⁷. The court held that the term 'evidence' includes electronic evidence and that video conferencing may be used to record evidence.

Swapnil Tripathi v. Supreme Court of India⁶⁸

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Military One Source, 12 situations where you can get free legal help. https://www.militaryonesource.mil/financial-legal/legal/other-legal-issues/12-situations-where-you-can-get-free-legal-help/

⁶⁴ National Science Foundation, Award Abstract RAPID: Procedural Changes in State Courts During COVID-19. https://www.nsf.gov/awardsearch/showAward?AWD_ID=2028981&HistoricalAwards=false

⁶⁵ National Science Foundation, Award Abstract SCC-PG: Just Connect Us: A Community-Oriented Civil Justice Data Commons. https://www.nsf.gov/awardsearch/showAward?AWD ID=1952067&HistoricalAwards

⁶⁶ Social Security Administration, SSA online video hearings during COVID-19. Retrieved August 2020, from https://www.ssa.gov/appeals/hearing_video.html

⁶⁷ (2003) 4 SCC 601.

⁶⁸ (2018) 10 SCC 628.

CRITICAL ANALYSIS OF TECHNOLOGICAL INTERVENTIONS.

CONCLUSION

In conclusion, the COVID-19 pandemic has presented unprecedented challenges to the justice delivery system globally, exacerbating existing issues of case backlogs and access to justice. However, the proactive measures taken by honorable high courts and the Supreme Court, including the adoption of technological interventions like video-conferencing and e-Lok Adalats, have played a crucial role in mitigating these challenges. These innovations have not only facilitated the continuation of legal proceedings but have also expanded access to justice for individuals, particularly in countries like India. Moving forward, further research and investment in technology-driven solutions will be essential for ensuring the resilience and effectiveness of the justice system in the face of future crises.

REFERENCES

- [1] https://www.oecd.org/governance/global-roundtables-access-to-justice/access-to-justice-compendium-of-country-practices.pdf
- [2] https://www.ibanet.org/article/F1A1E3A6-675F-455B-B190-038306399CBB#:~:text=The%20Covid%2D19%20pandemic%20has,of%20'access%20to%20justice'.

Citation: Anoop Kumar and Aarushi Batra, Access to Justice During Covid-19 Pandemic: Role of Technological Interventions, International Journal of Intellectual Property Rights (IJIPR), 14(1), 2024, 8-16.

Article Link:

https://iaeme.com/MasterAdmin/Journal_uploads/IJIPR/VOLUME_14_ISSUE_1/IJIPR_14_01_002.pdf

Abstract Link:

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https://iaeme.com/Home/article_id/IJIPR 14 01 002

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