



PROFESSIONAL ARTICLE

"The COVID-19 Crisis – the New Challenges Before the Indian Justice and Court Administration System"

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In India, the COVID-19 crisis came at a time when the focus was already on accelerating the setting up of E-courts and the digitization of justice and court administration. The journey of e-Governance initiatives in court administration started mainly in the mid-1990s and was further enhanced after enactment of the Information Technology Act 2000 (amended 2008). E-courts were launched as a part of the National e-Governance Plan (NeGP) way back in 2006. However, it appears that the sudden and unexpected advent of COVID-19 crisis has provided a greater fillip in bringing about a rapid transformation in the manner of court administration in the country. As physical appearances by lawyers and litigants were discouraged in courts due to the strict safety protocols of the COVID-19 crisis, greater use of technology, already put in place, came in handy in justice and court administration. This paper aims to broadly cover the situation in India before the COVID-19 crisis, and examine how the court administration reacted to various challenges thrown up by the COVID-19 crisis, particularly, in the period after lockdown. It will outline the major technological initiatives existing in court administration in India before the advent of the COVID-19 crisis, such as court related apps, before discussing how courts at various levels, including Lok Adalats (People's Courts), the Supreme Court, the High Courts and the District and Subordinate Court, modified the manner of court functioning during COVID, accelerating the move towards e-Judiciary. It will then discuss some of the challenges that have been encountered, including reservations of the Bar, and major hurdles facing the court administration post-COVID 19.

Keywords: Justice and Court Administration; COVID-19 Crisis; Information Technology Act; 2000 (amended 2008); Lok Adalats (People's Courts); E-courts; E-judiciary

1. Introduction

It is an irony of fate that the COVID-19 crisis in India came at a time when justice and court administration had reached the threshold of a new era with a lot of groundwork already

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done, specially during the last decade or so, in the area of utilization of Information and Communication Technologies (ICTs) and the Internet. The e-Governance initiatives in justice and court administration were further enhanced after enactment of the Information Technology Act, 2000 (amended 2008). Then E-courts were set up in the country as a crucial part of the National e-Governance Plan (NeGP) launched in 2006.

However, the sudden and unexpected onslaught of the COVID-19 crisis has thrown up new challenges in the justice and court administration in the country, including those facing the courts in the aftermath of the lockdown. Before analysing these, to put things in proper perspective, we begin by outlining in more detail the major technological initiatives existing in court administration in India before the advent of the COVID-19 crisis, such as court related apps. Thereafter, we examine how the court administration reacted to the challenges thrown up by COVID-19, investigating how courts at various levels, including Lok Adalats (People's Courts), modified the manner of court functioning. We highlight how the COVID-19 crisis changed the working of the Supreme Court, the High Courts and the District and Subordinate Courts, in particular, accelerating the move towards e-Judiciary, before discussing reservations of the Bar and some major hurdles facing the court administration in the aftermath of the COVID-19 crisis in India.

2. Methodology

The onset of the COVID-19 crisis has been recent and it appears to be too early to gauge a quantitative impact of the pandemic on various facets related to the judicial system in India, more so, because the situation is still in a flux. Therefore, this paper attempts to provide a broad and more comprehensive picture of the countrywide scenario of court and justice administration, and the impact of the COVID-19 crisis, based on primary and secondary published sources, including, at the outset, a brief overview of the previous literature on court technology in India.

3. Literature Review

In the existing literature on court technology in India, studies related to court technology and COVID-19 crisis are scant. Accessible literature, mostly pertains to the pre-COVID-19 crisis period and covers how the E-courts project and other technology related initiatives of the Government in court functioning were being implemented countrywide at various levels, viz., the Supreme Court, the High Courts and at the Subordinate or District courts, and other court management techniques. Whereas, those, very few, done during the COVID-19 crisis era were mostly limited to how the courts under various levels of judicial authority were handling the situation by issuing COVID-19 crisis related directions.

In the context of the COVID-19 crisis, some commentators have expressed concern that conducting judicial proceedings on line, a measure adopted by some Indian courts during the pandemic, endangers the principle of "Open Courts."¹ Others have expressed optimism that the COVID-19 crisis will serve as a catalyst to unleash the potential for technology to improve access to the judicial system, while stressing "the need for a systematic and scientific approach to technology integration in the judiciary."²

Remaining commentators did not take up the COVID-19 crisis challenges before the Indian courts, but focussed on other issues. Two commentators indicated that use of technology in

¹ Bar and Bench. *Virtual Courts: A sustainable option?*, Dubey, Pramod Kumar, 12 April, 2020, <<https://www.barandbench.com/columns/virtual-courts-a-sustainable-option>>, accessed 30 January 2021.

² Kinhal, Deepika et al. *Virtual Courts in India: A Strategy Paper*, Centre for Legal Policy, 1 May 2020. <<https://vidhilegalpolicy.in/research/virtual-courts-in-india-a-strategy-paper/>> accessed 2 February 2021.

the Indian legal system could bring down the pendency of cases. For instance, B. N. Prakash feels that “E-judiciary is a step towards modernization in Indian legal system”, and “computerization in judiciary has become an effective tool to bring down the pendency of cases and to reduce the delay”.³ Ujaley also stressed that in the Indian legal system “technology which provides integrated communication systems that includes video conferencing, audio solutions, recording, streaming and content sharing capabilities... is a very useful way for courts to ensure justice is not delayed and cases are closed in a timely manner.”⁴ On court management techniques, a study was conducted, commissioned by the Ministry of Law and Justice, Government of India, the aim of which was “to identify various court management techniques that have been adopted by the court managers across various subordinate courts for improving the efficiency of subordinate courts”.⁵ Aggarwal is of the view that other countries like U.K., U.S., Malaysia, Turkey, China and Dubai, are way ahead in the application of technology in the legal system, whereas, India “is still battling to get advanced with technology to some extent in judicial services”.⁶

4. The Situation in India Before the COVID-19 Crisis

In fact, prior to the sudden onset of the COVID-19 crisis in 2019, fortunately, India had already covered a lot of ground in digitization of justice and court administration. Three particularly significant developments had been the E-Courts Project, and the development of Supreme Court and E-Court Services Apps.

4.1 E-Courts Project

Prior to the COVID-19 crisis, the E-courts project was one of the National e-Governance projects implemented in all the District/Subordinate Courts in the country. The main aim of the E-courts was to provide a transparent, accessible and cost-effective justice delivery system to all citizens through the Information and Communication Technology (ICT) and Internet enabled courts. Significantly, the E-courts Project had made digital interconnectivity possible among all courts from the District and Taluka level to the apex court. The E-courts project had been earlier conceptualised under the “National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary –2005” prepared by the e-Committee of the Supreme Court of India.⁷ Approved in 2010, it was saving a lot of time for users besides providing other benefits. As a public convenience, various E-Court services were availed by the concerned citizens through the Judicial Service Centre at a court

³ B. N. Prakash, Setlur. *E Judiciary: A Step towards Modernization in Indian Legal System*, Journal of Education & Social Policy, Vol. 1 No. 1; June 2014. <http://jespnet.com/journals/Vol_1_No_1_June_2014/15.pdf>, accessed 4 February 2021.

⁴ Express Computer. *Revamping India's judicial procedures with courtroom technology*, 9 February 2021, <<https://www.expresscomputer.in/news/revamping-indias-judicial-procedures-with-courtroom-technology/22263/>>, Ujaley, Mohd, accessed 28 January 2021.

⁵ NALSAR University of Law, Hyderabad. *A Study On Court Management Techniques for Improving the Efficiency of Subordinate Courts*, submitted to Govt. of India. Ministry of Law and Justice, New Delhi. <https://doj.gov.in/sites/default/files/Final%20DOJ%20Report_Revised%20%281%29.pdf> accessed 27 January 2021.

⁶ Pleaders: Intelligent Legal Solutions. *Technology: Rejuvenate Legal Regime*, Aggrawal, Siddhi, <<https://blog.ipleaders.in/technology-rejuvenate-legal-regime/>>, 10 June 2020, accessed 29 January 2020.

⁷ Govt. of India, Ministry of Law and Justice. *Evaluation Study of eCourts Integrated Mission Mode Project*, National Council of Applied Economic Research, New Delhi, 2015, p. XV, <https://www.researchgate.net/profile/Sohini_Paul3/publication/327200189_Evaluation_Study_of_eCourts_Integrated_Mission_Mode_Project_Project/links/5b7f8952299bf1d5a723ca5b/Evaluation-Study-of-eCourts-Integrated-Mission-Mode-Project-Project.pdf>, accessed 1 November 2020.

complex.⁸ So, provision already existed in majority of the courts for e-Service of summons, notices, warrants through e-mail via the internet; e-cause lists were available on the court website, as well as, case status, online filing, and orders and judgments in PDF, plus every important court information was also provided to the litigant, such as working days, holidays, names of judges, and so on, which came in handy at the time of the COVID-19 crisis.

4.2 The Supreme Court App

Another important step towards the digitization of the justice administration system which was already taken prior to the onslaught of the COVID-19 crisis was the introduction of the Supreme Court App. The Chief Justice of India, while explaining the utility of the application, expressed the hope that artificial intelligence fuelled law translation system would facilitate the quality translation and further help in improving the efficiency of the Indian Judicial System. The Supreme Court App was to translate the judgements into nine regional languages.⁹ Translation in court matters was a necessity and manual translation in the past used to be a major problem being quite laborious and consumed a lot of time often causing inordinate delays in the judicial process.

This official mobile app of Supreme Court of India, is free to download and also provides useful information on pending and decided cases with a personalized dashboard containing Cause Lists, Case Status, Daily Orders, Judgments, Latest Updates, Office Reports, Circulars and much more. All these can be accessed, downloaded and shared in a user friendly interface.¹⁰

4.3 E-court Services App

Also much before the COVID-19 crisis made its appearance, in 2017, the E-courts Services mobile application was launched. The E-Court Services App provides information related to cases filed in the Subordinate Courts and most of the High Courts in the country. It can be exclusively used for District Courts or High Court or both. The App provides several useful features to digitally assist the lawyer or the litigant, including the provision of search by CNR – which is a unique number assigned to each case filed in District and Taluka Courts anywhere in India through the Case Information System – so that, simply by entering the CNR, one can get the current status and details of the case. In addition to Case Status, search options include Cause List and Calendar. The litigant or lawyer can save all cases of interest, which are shown under a 'My Cases' tab. This facilitates the creation and management of a portfolio of their cases or personal case diary for future use.¹¹

Further, the E-Court Services App also provides numerous other services including¹²: Anyone can view entire case history of a lawsuit through this App; Case status, cause list, next date of hearing and so on. There is also a provision for lawyers and litigants to e-pay court fees.¹³ The App provides scanning of QR code to access the entire case status. The App is also

⁸ Ibid., p. iii.

⁹ The Economic Times, 26 November 2019, *SC proposes to introduce system of artificial intelligence, says CJI* <<https://economictimes.indiatimes.com/news/politics-and-nation/sc-proposes-to-introduce-system-of-artificial-intelligence-saysji/articleshow/72245549.cms?from=mdr>> accessed 15.09.2020.

¹⁰ Computer Cell, Supreme Court of India. *Supreme Court of India – Official Mobile App*, <https://play.google.com/store/apps/details?id=com.nic.sciapp&hl=en_IN&gl=US> accessed 1 June 2020.

¹¹ Government of India. *NIC eGov Mobile Apps*, <https://play.google.com/store/apps/details?id=in.gov.ecourts.eCourtsServices&hl=en_IN&gl=US>, accessed 1 July 2020.

¹² E-Court Services: District and Taluka Courts of India, <https://services.ecourts.gov.in/ecourtindia_v6/> and Official Website of District Court <eCourts Services App on Mobile For Checking Case Status./District Court in India | Official Website of District Court of India>, accessed 13 June 2020.

¹³ Official Website of District Court, <eCourts Services App on Mobile For Checking Case Status./District Court in India | Official Website of District Court of India>, accessed 12 June 2020.

connected with all 18,000 District and Subordinate Courts and 21 High Courts with more than 3.2 crore (more than 30 million) case statuses available on the App. That such digitization initiatives in the judicial system were being well received is demonstrated by the fact that the App had seen over 17 lakh (1.7 million) downloads within a few months of its launch, recording almost 5,000 downloads a day.¹⁴ Some useful features include that the History of Case Hearings option in the App shows entire history of the case from first date of hearing to current date of hearing. Whereas, the Judgment option shows link of all judgments and orders passed and uploaded in the selected case and judgments can be downloaded using the App.

5. The Courts' Responses to COVID-19 – A Speedier Metamorphosis of E-courts to E-judiciary in the Post COVID-19 Crisis Era

So, summarizing broadly, it can be said that the E-courts in India are digitized courts which, using the information and communication technologies (ICTs) and the Internet, provide online information to various stakeholders. Such online information may be a one way or two-way communication. One-way information involves the courts providing information online, such as every possible information as made available on a court's website. It also includes sending information to a person through any commonly used electronic mode such as SMS or WhatsApp. Whereas a two-way traffic, for example, includes online interaction among the litigants and lawyers and the courts.

In fact, it would also be pertinent to mention here that much before the advent of the COVID-19 crisis, E-courts had also become quite common in many other countries of the world as well, including the United States, South Korea, Singapore and so on. In India, as in other countries, the E-courts were already playing an important role in avoiding unnecessary congestion in the courts by giving opportunities to stakeholders to interact online with courts – a requirement that had emerged and had become more of a necessity much later under the safety protocols of the COVID-19 crisis.

However, E-judiciary is a step beyond E-courts. E-judiciary involves not only filing of cases online, but also includes, among other things, avenues for online interaction between the judges and advocates, online proceedings, online examination and cross examination of witnesses and finally passing of online judgements. Prior to COVID-19, after the success of E-courts, there was no urgency in moving forward and things had been moving at their own bureaucratic pace in the implementation of E-judiciary in India.

However, the COVID-19 crisis, due to its safety protocol norm of social distancing, started nudging the judicial administration to take a quicker leap from the existing stage of E-courts and jump to the next level, i.e., E-judiciary. In fact, as a direct consequence of the COVID-19 crisis, after E-courts we are now witnessing a new impetus to leapfrog from E-courts to E-judiciary as a preferred mode of justice administration in courts at various levels, as the following examination of the courts' responses to COVID-19 illustrates.

5.1 Impact of the COVID-19 crisis on the Working of the Lok Adalats (People's Courts)

Established in the early 1980s in India, the Lok Adalats are a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/compromised amicably. Till 2015, more than 15.14 lakh (1.514 million) Lok Adalats have been organized in the country from the beginning in which more than 8.25 crore cases have been settled by this mechanism

¹⁴ Times of India, 4 March 2019. *eCourts app brings reforms in justice delivery system*, Thakur, Pradeep, <eCourts app brings reforms in justice delivery system | India News – Times of India>, accessed 12 June 2020.

so far.¹⁵ In order to be more accessible to the people, Mobile Lok Adalats also function in various parts of the country travelling from location to location to resolve disputes.

It has been rightly observed that the 'concept of Lok Adalat (People's Court) is an innovative Indian contribution to the world jurisprudence. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the victims for a satisfactory settlement of their disputes. This system is based on Gandhian principles. It is one of the components of ADR (Alternative Dispute Resolution) systems'.¹⁶

The ruling of a Lok Adalat is deemed to be a decree of a civil court and is final and binding on all parties and no appeal against such an award lies before any court of law.¹⁷ The Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India.¹⁸

The National Level Lok Adalats are held for at regular intervals whereas, on a single day, Lok Adalats are held throughout the country, in all the courts right from the Supreme Court till the Taluk Levels wherein cases are disposed of in huge numbers.¹⁹

Litigants generally approach the Lok Adalats for cases pending in courts such as 'criminal compoundable offences, NI Act cases under Section 138, bank recovery cases, MACT cases, Labour disputes cases, electricity and water bills (excluding non-compoundable), matrimonial disputes, service matters relating to pay and allowances and retirement benefits, etc.'²⁰

Ever since beginning, the mode of hearing in Lok Adalats has been through physical presence of the concerned parties. However, of late, a new trend is observed in their functioning. More specifically, the COVID-19 crisis safety protocols have compelled the introduction of virtual hearings in this avenue of justice administration as well. This is clearly evident from the case of the Punjab State where this new trend has initiated. In early December 2020, admitting the impact of the COVID-19 crisis, the concerned legal authority of the Punjab State had announced that 'In view of the Covid pandemic, the Punjab State Legal Services Authority has decided to hold National Lok Adalat in the e-lok adalat format for the first time in the entire state on December 12,' and the District and Sessions Judge and Member Secretary of the Punjab State Legal Services Authority clearly specified that "...the decision to conduct e-Lok Adalat has been taken to maintain social distancing protocol amid the pandemic'.²¹

5.2 COVID-19 Crisis and Functioning of Courts

In addition to derailing other sectors, the COVID-19 crisis had also seriously impacted the normal functioning of justice administration in India, as in other countries and threw a spanner in the way of normal functioning of courts. Not only in the Apex Court and high courts in all the states of the country but the reverberations of the COVID-19 crisis were also felt till the lowest rung of justice administration, i.e., all the district and subordinate courts. Briefly,

¹⁵ National Legal Services Authority, <<https://nalsa.gov.in/lok-adalat#:~:text=As%20on%2030.09.,by%20this%20mechanism%20so%20far.>>, accessed 8 December 2020.

¹⁶ Civildaily, <<https://www.civildaily.com/lok-adalats-origin-evolution-jurisdiction-powers/#:~:text=The%20first%20Lok%20Adalat%20was,of%20the%20Constitution%20of%20India>>, accessed 7 December 2020.

¹⁷ National Legal Services Authority, <<https://nalsa.gov.in/lok-adalat#:~:text=As%20on%2030.09.,by%20this%20mechanism%20so%20far.>>, accessed 8 December 2020.

¹⁸ Civildaily, <<https://www.civildaily.com/lok-adalats-origin-evolution-jurisdiction-powers/#:~:text=The%20first%20Lok%20Adalat%20was,of%20the%20Constitution%20of%20India>>, accessed 7 December 2020.

¹⁹ National Legal Services Authority, <<https://nalsa.gov.in/lok-adalat#:~:text=As%20on%2030.09.,by%20this%20mechanism%20so%20far.>>, accessed 8 December 2020.

²⁰ The Chandigarh Tribune, Chandigarh, *In a first, e-lok adalat to be held in Punjab on Dec 12*, 7 December 2020, p. 3.

²¹ Ibid.

in simple terms, what kind and the ambit of impact the COVID-19 crisis had on the functioning of courts in India can be gauged from various court orders issued from time to time by competent judicial authorities.

5.2.1 The Supreme Court of India

Taking the case of the Supreme Court first, a number of steps were taken at that level to ensure the safety of the lawyers, litigants and the general visiting public. Early enough the Supreme Court had also started taking necessary precautions to counter the threat of the COVID-19 crisis. For instance, the Supreme Court issued a notification in March 2020 and directed that the functioning of the Courts from Monday, 16 March, 2020 was to be restricted to urgent matters with such number of Benches as may be found appropriate. Further, no persons except the lawyers who were going to act in the matter, i.e. either for argument or for making oral submissions or to assist along with one litigant only, were to be permitted in the court room. Mentioning of matters were to be made before the Mentioning Officer only.²² What is of particular significance is that in view of the COVID-19 crisis, the Supreme Court also laid down the standard operating procedures for lawyers and litigants-in-person for attending urgent hearing of a matter through video conferencing.

Due to safety reasons in view of the COVID-19 crisis, the Supreme Court had also cautioned that within the court premises “in view of the advisory issued by the Government of India cautioning against mass gathering(s) *to avoid the spread of Novel Coronavirus (sic) (COVID-19) infection, following precautionary measures are being put in place* ‘(emphasis added)’... All staff members are impressed upon not to crowd at any particular place in the Supreme Court premises, except where their presence is officially required.”²³

Moreover, the Supreme Court of India had been operating at a reduced capacity since mid-March 2020, “*to help prevent the spread of COVID-19. Nevertheless, with the aid of technology, it has continued to hear urgent matters, while still safeguarding the health of judges, advocates, litigants and registry officials* ‘(emphasis added)’. It has relied heavily on e-filing and video-conferencing to continue to operate.”²⁴

It is significant to note that in view of the COVID-19 crisis threat, the Supreme Court decided to use technology more in judicial proceedings and directed that for services of notices and summons, pleadings it was realized that it was not possible during lockdown to visits postal offices so Apex Court permitted that the service of notices and summons may be done by email, fax, or through an instant messenger service. Significantly, the Supreme Court had earlier taken suo motu cognizance of the difficulties faced by lawyers and litigants during lockdown due to COVID-19 and had decided to extend the period of limitation prescribed under laws for initiating arbitral proceedings and the cheque bounce cases with effect from March 15 till further orders.²⁵ Also, regarding the functioning of Commercial Courts, the Supreme Court had extended limitation period fixed for mediation by 45 days after lifting of the lockdown.

²² Supreme Court of India. *Notification* issued by Secretary General, <https://scoobserver-production.s3.amazonaws.com/uploads/beyond_court_resource/document_upload/384/Hearing_of_only_Urgent_Matters.pdf>, 13 March 2020.

²³ Supreme Court of India. *Notification* issued by Registrar, <http://www.manupatrafast.in/covid_19/Supreme%20Court/Court/14032020_093925.pdf>, 14 March 2020.

²⁴ Supreme Court Observer. *Covid Coverage: Court's Functioning*, <<https://www.scoobserver.in/the-desk/covid-coverage-court-s-functioning>>, 28 July 2020.

²⁵ The Economic Times. *Supreme Court allows email, fax, instant messaging apps like 'WhatsApp' for service of notices, summons*, <<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-allows-email-fax-instant-messaging-apps-like-whatsapp-for-service-of-notices-summons/articleshow/76898274.cms>>, 10 July 2020.

5.2.2 The High Courts

At the next lower level of justice administration, i.e., at the State level, even the high courts in the country did not lag behind and had been issuing COVID-19 crisis related guidelines from time to time. For instance, to take an illustrative example of one State Court, in April 2020, keeping in view the prevailing situation arising due to outbreak of the novel coronavirus (COVID-19), the Hon'ble Chief Justice of the Punjab and Haryana High Court ordered that while performing the duty in the court, the judicial officers as well as the officials were to ensure the proper precautionary measures to be adopted strictly including use of masks, hand sanitizers etc. besides maintaining safe social distancing. Directions were also issued that whenever any person was to be produced in the court by the police for the purpose of the police remand etc., it was to be ensured that such person was wearing mask and his hands were properly sanitized before entering the court complex and the safe social distancing was to be maintained inside the court.²⁶

5.2.3 The District and Subordinate Courts

In March 2020 again, at the grassroots level of justice administration also, necessary directions were given to all the District and Subordinate Courts all over the country by their respective high courts to strictly adhere to various guidelines issued regarding the COVID-19 crisis in order to check its spread. For illustration, taking the example of the all the District and Subordinate Courts in the states of Punjab, Haryana and the Union Territory of Chandigarh, with regard to precautionary measures in wake of pandemic due to outbreak of Novel Coronavirus (COVID-19), the Hon'ble Chief Justice of the Punjab and Haryana High Court had issued on 17 March 2020 the following orders.²⁷

All the Courts at District and Sub-Divisional level in the States of Punjab, Haryana and U.T. Chandigarh were to take up only bail matters and matters requiring urgent stay/injunction, till further orders. The remaining matters were directed to be adjourned. The matters fixed for final argument (including time bound matters) were to be adjourned to date beyond 31.03.2020. If prayed, the Court was to consider the exemption applications sympathetically and avoid personal appearance was to be avoided, as far as practicable, in order to avoid human footfall in the Court Complex. While avoiding passing of adverse/default orders every effort was to be made by the Judicial Officers to avoid crowding in the respective Court Room/s. No under-trial prisoner was to be produced before the subordinate courts till further orders and facility of video Conferencing was ordered to be utilized for the said purposes including extension of remand. Significantly, it was ordered that in all the matters effort was to be made by the concerned Courts to use Video Conferencing facilities, thereby avoiding human contact. It is to be noted that the orders also covered the court premises as well as the canteens and Bar Rooms with clear directions that the District and Sessions Judge(s) were forthwith required to coordinate with the District Administration, Health Authorities, Bar Association for ensuring the cleanliness/sanitization in the Court Premises. The representatives of the Bar Association were also requested to avoid crowding in the Bar Rooms and, if necessary, the closure of the Bar Rooms and Canteens during this period was also to be considered. The orders also discouraged clients physical presence in the court premises and directed that the advocates be instructed through the representatives of the Bar Association to advise their clients not to visit the Court Complex unless their presence was directed by the Court or

²⁶ Order of the Hon'ble Chief Justice of the Punjab and Haryana High Court, No. 5/Spl./RG/Misc., issued by Registrar General, 11 April 2020.

²⁷ Orders of Hon'ble Chief Justice of Punjab and Haryana High Court. *The Matter with regard to precautionary measures in wake of pandemic novel coronavirus (COVID-19)*, Registrar General, 17 March 2020.

was unavoidable. The unit criteria and Action Plan applicable to all subordinate courts was ordered to remain suspended from 16.03.2020 till 31.03.2020. Institutional training was also ordered to be stopped with clear instructions that the Chandigarh Judicial Academy was to suspend all its Institutional Training programmes, till further orders. The subordinate judiciary was asked to remain alert and if necessary the District and Sessions Judges in order to meet out any eventuality with regard to precautionary measures in wake of pandemic novel coronavirus (covid-19) were authorized to take suitable administrative measures at their own level with prior intimation to the respective Hon'ble Administrative Judge. Most importantly, it was also ordered that all precautionary measures as advised by the government authorities in the matter were to be strictly adhered to and followed in letter and spirit.

5.2.4 Virtual Hearings

As a result of these measures, court virtual hearings are becoming more and more common by the day. Normally, virtual proceedings were being conducted in the pre-COVID-19 crisis era generally in criminal cases where the accused could not be produced physically before the court due to security reasons. However, due to the strict COVID-19 crisis safety protocols, the courts have started hearing even the normal cases through video-conferencing. To quote some recent examples, 'High Court stays regular selection of medical faculty,' stated a newspaper headline and besides giving other details about the case also mentioned that the parties appeared before the Bench through 'video-conferencing'.²⁸

In line with this new trend, according to the Law Ministry, the e-Committee of the Supreme Court and the Department of Justice of the Government of India, released funds 'to set up video conference (VC) cabins in 2,506 court complexes across the country, ... While 5.21 crore (over Rs. 5 million) was released in September (2020) to set up the cabins, another Rs. 28.89 crore (nearly Rs. 29 million) was given in October to buy equipment'.²⁹

Incidentally, it is interesting to note here that the pre-COVID-19 crisis era was never witness to such a haste in resorting to the use of technology in justice administration in India and the judiciary had even opposed it earlier. For instance, though the use of the video conferencing mode of court hearings had made its appearance much prior to the COVID-19 crisis, at that time the judiciary was divided over the benefits or appropriateness of its use. Even the Supreme Court of India dilly-dallied in its view and did not seem to be sure whether to favour video-conferencing or e-hearings in justice administration or not.

More specifically, "In the year 2014, a Division Bench of the Supreme Court, while allowing a transfer petition, made observations about the usage of video conferencing facility to hold matrimonial proceedings when both parties were not located within the jurisdiction of the same court.... Soon after this judgment was pronounced, the Supreme Court took to directing video conferencing in most transfer petition matters. However, this change was short lived, as a subsequent three-judge bench judgment of the Court in *Santhini v. Vijaya Venketesh* overruled the judgment in *Veni Nigam's case*. Notably, the judgment in *Santhini's case* was delivered by a 2:1 majority. While the majority (the then Chief Justice Dipak Misra along with Justice AM Khanwilkar) *took the view against video conferencing* '(emphasis added)', Justice DY Chandrachud dissented and wrote an opinion in favour of video conferencing".³⁰ Earlier reservations in judiciary notwithstanding as 'The judgment in *Santhini's case* to a large extent dis-

²⁸ Chandigarh Tribune, Chandigarh, 31 October, 2020, p. 1.

²⁹ The Tribune, Chandigarh, 2.5K courts to be equipped for online hearing, 7 December 2020, p.1.

³⁰ Bar and Bench. *The Supreme Court is online: Pros, cons and the way forward for hearings by video conferencing*, 20 April, 2020, <<https://www.barandbench.com/columns/the-supreme-court-is-online>>, accessed 10 November 2020.

sued the adoption of video conferencing in conducting hearings, Yet, when the exigency of COVID-19 stuck the nation, only video conferencing came to the rescue of litigants.’³¹

Ironically, under the changed circumstances the Supreme Court has started playing a different tune with regard to video conferencing, ‘In fact, it (the Supreme Court) has fast-forwarded that which was in the pipeline for a few years now – court hearings through video conferencing.’³² The Supreme Court now appears to be going full steam and encouraging e-hearings in E-judiciary but, nevertheless, hastened by the COVID-19 crisis, it took six years for that metamorphosis to happen in justice administration in India.

6. E-judiciary in India and the COVID-19 Crisis: Issues and Challenges

No wonder E-judiciary is being hailed as a safer mode of justice administration during the COVID-19 crisis with added efforts for its rapid universalization in the country. However, the move is also throwing up a number of challenges that need to be addressed as a priority for avoiding unnecessary hardship to lawyers and litigants during this rapid transition period.

6.1 Increase in Cases Pending

It is rightly observed that the COVID-19 crisis has not only caused immense harm the world over by not only bringing the down the economies but also caused adverse impact on many businesses and professions,³³ and the legal profession is no exception. Regarding its impact on justice administration in India, it was rightly perceived that “Covid-19 has brought almost the entire world to a near-standstill, and India’s justice delivery system – rarely known for its speed even in the best of times – is no different. Official data shows that while the institution of new cases, both in the higher judiciary and subordinate judiciary, had come down since the beginning of the nationwide lockdown on 25 March (2020), the disposal rate has also been severely affected due to the forced closure of courts. The judiciary has come under immense pressure to innovate during this pandemic so as to balance public health concerns with access to justice,” and “All courts, including the Supreme Court, high courts and district courts, have been operating in a highly restricted manner. Mostly courts have already decided to persist with the restricted functioning”³⁴

Further, “Limited benches presiding over select matters daily, cases pending before constitution benches have been put on the back burner. In the entire month of April, 82,725 cases were filed in India’s courts, while 35,169 cases were disposed of. Compare this to 2019, when the average number of cases filed per month was around 14 lakh (1.4 million)... while the average number disposed of per month was 13.25 lakh (1.325 million)”³⁵

Of particular importance is that the Indian Parliament too took the COVID-19 crisis seriously and set up a Parliamentary Committee Panel (hitherto referred as Parliamentary Panel) to look into the whole issue and its consequences. *This was the first report to be presented by any Parliamentary Panel on the impacts of Covid-19 pandemic*, and significantly, the Panel recommended “continuation of Virtual Courts even after the Covid-19 pandemic gets over for

³¹ *Ibid.*

³² *Ibid.*

³³ LiveLaw.in, *Pandemic (Covid 19) And Nationwide Lockdown Severely Damages Legal Professionals*, <<https://www.livelaw.in/columns/pandemic-covid-19-and-nationwide-lockdown-severely-damages-legal-professionals-158010>>, accessed 15 November 2020.

³⁴ Civildaily. *Judiciary in Times of COVID-19 Outbreak*, 12 May 2020, <<https://www.civildaily.com/burning-issue-judiciary-in-times-of-covid-19-outbreak/>> accessed 27 July 2020.

³⁵ Civildaily. *Judiciary in Times of COVID-19 Outbreak*, 12 May 2020, <https://www.civildaily.com/burning-issue-judiciary-in-times-of-covid-19-outbreak/> accessed 27 July 2020.

some identified categories”, since “digital justice is cheaper and faster” and that the court was “more a service than a place”.³⁶

But at the same time, the Parliamentary Panel admitted that virtual courts did have issues but they must succeed, as a virtual court is an improvement over traditional court. The Panel urged advocates to change with times and also recommended the teaching of a computer course in law courses and to make changes in the law to validate virtual court proceedings.³⁷

6.2 Reservations by the Bar

However, on the other hand, the Bar had its own reservations and did not seem to welcome such new technological changes in court functioning with open arms. Expressing concerns, the representatives of the Bar had argued before the Parliamentary Panel that the virtual proceedings favour the tech-savvy advocates besides depriving lawyers of an opportunity to present their case and change the course of arguments based on the changing dynamics of a case.³⁸ The Bar maintained that “An advocate gets to understand the mood of the judges and stands a better chance at convincing them during physical hearings. However, online hearing creates a psychological pressure on both the advocates as well as the judges. Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expressions, postures and gestures”.³⁹

Lawyers maintained that virtual hearings deprived them of the opportunity to alter the course of argument based on the ‘changing dynamics of a case during a hearing’, as “An advocate gets to understand the mood of the judges and stands a better chance at convincing them during physical hearings. However, online hearing creates a psychological pressure on both the advocates as well as the judges. Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expressions, postures and gestures,” the advocates claimed.⁴⁰

However, the Parliamentary Panel maintained that various Appellate Tribunals like Telecom Disputes Settlement and Appellate Tribunal (TDSAT), National Company Law Appellate Tribunal (NCLAT) and Intellectual Property Appellate Board (IPAB) can adapt to a system of complete virtual proceedings as they do not require personal appearances of the advocates or parties”.⁴¹

Interestingly, a reviewer of the situation also concurred that the technological initiative “has been welcomed with open arms by stakeholders of the legal fraternity, which unfortunately includes only certain privileged and technology-aware class of lawyers, and not to the entire brethren”.⁴² While another lamented that “The legal profession is in a position where lawyers and judges are all content with their archaic methods and are loath to get habitual

³⁶ Parliament of India. Rajya Sabha Secretariat, Interim Report on the *Functioning of the Virtual Courts/Court proceedings through video conferencing*, 11 September 2020, <https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/Press_ReleaseFile/OTHER/1/327P_2020_9_9.pdf>, accessed 27 December 2020.

³⁷ Ibid.

³⁸ The Week, 11 September 2020. *Retain virtual courts post COVID-19, too: Parliamentary panel*, Sharma, Pratul, <Retain virtual courts post COVID-19, too: Parliamentary panel – The Week>, accessed 27 December 2020.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ The Daily Guardian. *Parliamentary Panel Bats for 'Digital Justice'; Virtual Courts to Continue*, 12 September 2020, <<https://thedailyguardian.com/parliamentary-panel-bats-for-digital-justice-virtual-courts-to-continue/>>, accessed 1 November 2020.

⁴² Bar and Bench. *Virtual Courts: A sustainable option?*, Dubey, Pramod Kumar, 12 April, 2020, <<https://www.barandbench.com/columns/virtual-courts-a-sustainable-option>>, accessed 30 January 2021.

with technology in law. Notwithstanding the fact that application of technology can give legal professions a new dimension".⁴³

Even the Parliamentary Panel admitted that over 50 per cent of advocates, mostly at the district and lower courts were not having either a laptop or a computer and lacked skills required for virtual proceedings. Nonetheless, it was of the view that "In coming times, technology will emerge as a game-changer and advocates would be required to use technological skills in combination with their specialised legal knowledge and, therefore, they should keep up with the changing times".⁴⁴

6.3 Access to Justice – the Digital Divide

Another serious repercussion as a consequence of the COVID-19 crisis in India is equally disturbing and cannot be ignored. The Courts in India at various levels, viz., Supreme Court, High Court and Subordinate or District Court levels through guidelines issued from time to time have been insisting on only virtual hearings in several types of cases during the COVID-19 crisis. However, due to the ground realities many litigants are barred from seeking justice for no fault of theirs. More specifically, in faraway rural areas or remote towns where there is no internet connectivity whatsoever, the lawyers are unable to contest and the litigants are suffering with the COVID-19 crisis situation to blame.

Besides, during the COVID-19 crisis, the situation seemed to be no different for other peripheral but important stakeholders in justice administration as well. Due to a substantial reduction in the footfall in the courts due to strictly imposed COVID-19 restrictions, there was meagre earning for the Notaries, Oath Commissioners and a section of lawyers who practised in relation to offences pertaining to petty crimes.

However, on the infrastructure front, with the COVID-19 pandemic dangers in view, the Government is also speedily providing video-conferencing rooms in courts across the nation⁴⁵ in order to facilitate E-judiciary mode of justice administration during the COVID-19 crisis period.

7. Conclusion

Showing its impact in India, as evident particularly in the period after lockdown, the global COVID-19 crisis suddenly enforced a sudden, rapid and unprecedented shift in the mode of court administration at all levels of judiciary. Key to this, has been a shift from E-Courts to E-Judiciary, in the form of virtual hearings.

Briefly, as of now, it cannot be said for sure that the COVID-19 crisis will be short-lived. That only time will tell, because the COVID-19 virus is showing long term after-effects as well, and long-Corona cases too are emerging, plus new strains/variants of the COVID-19 virus are making their appearance every now and then, like in the United Kingdom, South Africa, Brazil and so on, and the virus still continues to pose a dreadful potential global threat. We do not seem to be fully out of danger yet. So, for how long the COVID-19 crisis induced interim hurriedly introduced technological innovations and the new COVID-19 crisis prompted court working methods shall persist, is yet to be seen. Under the circumstances, whether these will become a permanent "new normal" in the court administration system of the country in times to come, is also difficult to predict. Nevertheless, this is an important aspect which would be

⁴³ Pleaders: Intelligent Legal Solutions. *Technology: Rejuvenate Legal Regime*, Aggrawal, Siddhi, <<https://blog.ipleaders.in/technology-rejuvenate-legal-regime/>>, 10 June 2020, accessed 29 January 2020.

⁴⁴ The Week, 11 September 2020. *Retain virtual courts post COVID-19, too: Parliamentary panel*, Sharma, Pratul, <Retain virtual courts post COVID-19, too: Parliamentary panel – The Week>, accessed 27 December 2020.

⁴⁵ The Tribune, Chandigarh, *2.5K courts to be equipped for online hearing*, 7 December 2020, p.1.

the subject matter of future quantitative legal studies, after the ongoing COVID-19 crisis dust settles down.

Another question that arises here is what next? India may have come to the stage of E-judiciary earlier than expected due to the COVID-19 crisis but is that all? It is observed that now further improvements in the justice administration in India are also expected to gather pace. Steps are afoot for greater use Artificial Intelligence (AI) in justice administration. For instance, in December 2019, the Chief Justice of India (CJI), had proposed to introduce the system of Artificial intelligence (AI) as that is expected to bring about further improvements in the judicial system of the country besides helping in better administration and delivery of judgements. The CJI allayed the fears that digitization will ultimately replace the judges in the courts. Clarifying, the Chief Justice of India at an event organized by Supreme Court Bar Association (SCBA) said that 'We propose to introduce, if possible, a system of artificial intelligence. There are many things which we need to look at before we introduce ourselves. We do not want to give the impression that this is ever going to substitute the judges.'⁴⁶

Competing Interests

The authors have no competing interests to declare.

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⁴⁶ The Economic Times, 26 November 2019, *SC proposes to introduce system of artificial intelligence, says CJI* <<https://economictimes.indiatimes.com/news/politics-and-nation/sc-proposes-to-introduce-system-of-artificial-intelligence-saysji/articleshow/72245549.cms?from=mdr>> accessed on 15 September 2020.

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