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# Covid-19: An Opportunity to Restructure the Indian Legal System

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## ABSTRACT

*The COVID-19 pandemic has, over the course of its 3 years, resulted in a significant loss of human life and continues to pose an incomparable challenge to day-to-day activities. The Indian Legal System, even before it entered the pandemic, was in severe ill health and enduring co-morbidities. With an unparalleled burden of judicial pendency, infrastructural shortcomings, scarce representation, etc., the condition of the Indian legal system was expected to severely deteriorate due to the pandemic and its corresponding implications. As the Covid crisis ploughed on, ravishing economies and reshaping livelihoods, the legal landscape too underwent harsh disturbances. With the pandemic-induced lockdown put in place, legal services in India and around the world found themselves shoved into an intimidating and novel online medium. Paradoxically, as horrifying and painful as the pandemic has been to a majority of the legal institution, it was seen that a part of these changes emerged for the betterment of the legal system and all those that it served to help. This paper aims to critically analyse the positive impacts the Covid-19 pandemic has on the Indian legal landscape, with particular emphasis on the problems facing the Indian legal system now and how the pandemic may bring about a change for the better.*

**Keywords:** Indian legal system, Covid-19, Judicial backlog, access to justice, restructure.

## I. WAYS IN WHICH THE PANDEMIC MIGHT TRANSFORM THE INDIAN LEGAL SYSTEM

The ramifications of the Covid pandemic have been far-reaching, affecting all societies, cultures, ecology and politics, among other spheres. Millions of livelihoods face an existential threat; the global economy has slowed down along with an exponential drop in world trade and movement.<sup>2</sup> With social distancing being acknowledged as an effective weapon for limiting the spread of this highly contagious illness, the modus operandi of a plethora of institutions and groupings began to reshape and transform to fit into this apparent “new normal”. One such

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<sup>2</sup> Haleem, A., Javaid, M., & Vaishya, R, *Effects of COVID-19 pandemic in daily life*. Current medicine research and practice, 10(2), 78–79. (2020). <https://doi.org/10.1016/j.cmrp.2020.03.011>

example is the effect the pandemic had and continues to have on revamping the Indian legal system, laying bare its fragility as well as paving new pathways for its progress.

One cannot disagree that the Indian Judiciary has gone out of the way to embrace technology during a desperate and unfortunate global crisis. Even in exceptional circumstances, information technology has ensured that the administration of justice is unaffected. On July 14th, 2020, the Supreme Court's Constitution bench of five judges sat through a virtual hearing for the first time, making history.<sup>3</sup> This was the first of many more to come. The legal landscape has implemented and transformed its working for the greater good and to preserve the ancient custom- *Fiat jūstitia ruat cælum* or "Let justice be done though the heavens fall."

Keeping this in mind, it is important to also look at how this exact change presents an enormous opportunity to reverse the plethora of unfortunate drawbacks that the Indian legal system suffers from. The analysis presented below enumerates the status quo of various problems in the country's legal landscape and how the pandemic has brought about an opportunity to tackle all of them individually.

## II. ACCESS TO JUSTICE

Richard Susskind, widely regarded as the premier professor of technology and innovation for justice, in his book *Tomorrow's Lawyers*, questions if the court is a service or a place.<sup>4</sup> Today, the phrase "access to justice" entails having recourse to a trustworthy venue for a cheap, rapid, and satisfying resolution of disputes. The words serve to concentrate on two fundamental functions of the legal system: the system through which people can assert their rights and/or resolve their problems under the broad auspices of the state. Keeping this in mind, we must ensure that the system must first be equally accessible to everybody, and second, it must produce results that are both personally and socially just.<sup>5</sup> The pandemic, which has reshaped the working of the legal landscape, provides the courts with the opportunity to work on just that. Ease of access to the dispensation of justice can be ameliorated with a meticulous plan in place.

First, since things have already started to shift online, the focus has fallen on the efficiency of e-filing of cases as a means to increase access to justice. An electronic method to file a case

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<sup>3</sup> Abraham Thomas, *Supreme Court holds first 'virtual' Constitution Bench hearing*, Hindustan Times, New Delhi, Jul 15, 2020. Available at: <https://www.hindustantimes.com/india-news/supreme-court-holds-first-virtual-constitution-bench-hearing/story-6OIJDbbzpliuJLFjz1z3mI.html>

<sup>4</sup> Richard Susskind, *Tomorrow's Lawyer: An introduction to your future*, Oxford, 21 Jan 2013, Available at: <http://www.nelc-law.com/docs/tomorrows-lawyers.pdf>

<sup>5</sup> Amit Pratap Shaunak, *India: Access to Justice in India*, Mondaq AI, 27 January 2015. Available at: <https://www.mondaq.com/india/human-rights/369048/access-to-justice-in-india>

can be followed even remotely without having to travel to the relevant court for proceedings. When this is seen in tandem with the added advantages of online payment, digital signatures, and online rectification of defects in filing, it shows how fruitful diligent planning surrounding this aspect can prove to be.

Second, the court should take advantage of the changes necessitated by the pandemic to revamp both their physical and digital infrastructure. Digitisation has made it easy to implement a more transparent system wherein citizens can view case status, hearing dates, etc., online. The Indian legal landscape is already using virtual systems such as Case Information System (CiS), Litigation Management and Briefing System (LiMBS), National Service and Tracking of Electronic Processes (NSTEP), and ‘Supreme Court Vidhik Anuvaad Software’ (SUVAS) (first point of use of Artificial Intelligence within the Indian legal system). With even more planning and development, the courts’ infrastructure can change, allowing people easier and more welcoming access to legal services.

Moreover, remote meetings with clients appear to be a more cost-effective and convenient option, as opposed to meeting lawyers or clients in person. This factor, if worked on properly, is bound to expand the outreach of legal services within India.

Finally, according to research, self-represented litigants confront a number of problems when navigating the legal system, including the requirement for training and support in many languages.<sup>6</sup> Since access to justice also entails conducive and fair access to legal services, it would be appropriate to say that the online environment has advanced the cause of making the Judiciary more inclusive linguistically. Virtual Medium’s ability to translate English documents such as court orders or judgements in vernacular languages has made the Indian legal landscape look more approachable and hospitable, thus widening its potential outreach.

### III. JUDICIAL BACKLOG

In India, the Judicial backlog is a gargantuan problem plaguing the country’s legal system. A significant number of pending cases has hampered the proper operation of the Judiciary and has severely harmed citizens’ entitlement to timely delivery of justice. As of February 29th 2020, India had around 3.68 crore pending cases spanning the Supreme Court, various high courts, and numerous district and subordinate courts.<sup>7</sup> This situation has only worsened

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<sup>6</sup> Phil Malone et al., *Best Practices in the Use of Technology to Facilitate Access to Justice Initiatives: Preliminary Report*, Berkman Center for Internet and Society at Harvard University, 6-7, 14-19, Appendix A, 2010, [https://cyber.harvard.edu/sites/cyber.harvard.edu/files/A2J\\_Report\\_Final\\_073010.pdf](https://cyber.harvard.edu/sites/cyber.harvard.edu/files/A2J_Report_Final_073010.pdf).

<sup>7</sup> Government Of India Ministry Of Law & Justice Department Of Justice, *Pending Court Cases*. Unstarred Question No. 686., p.1. Available at: <<http://164.100.24.220/loksabhaquestions/annex/173/AU686.pdf>>

because, according to the Central Government's data, the number of pending cases in courts across the country has surpassed the 4.6 crore milestone as of December 2021.<sup>8</sup>

With the advent of the pandemic, with courts shutting down and hearings turning to the virtual model, the Indian legal structure started becoming majorly dependent on IT-enabled systems for communications. After a few initial snags<sup>9</sup>, however, virtual technology found itself flourishing in the legal landscape of the country, and it cannot be denied that the pandemic is going to have a long-lasting effect as more proceedings will be conducted virtually, with Online Dispute Resolution being adopted and implemented pervasively.

Virtual Technology, such as electronic filing and online research, has helped restructure certain aspects of the court system. An e-court system would further allow for more systematic case management in courts, thus helping in reducing backlogs of pending cases. It would also improve the storage of file records, which would lessen information displacement. In fact, even a few judges are of the view that virtual hearing through Zoom, YouTube, and other streaming services should continue even after the pandemic ceases to wreak havoc.<sup>10</sup>

Keeping these considerations in mind, there rests a huge opportunity for the courts to seize. The digitisation of the Judiciary, while providing access to justice whilst keeping in mind health concerns, should also tackle limitations that may arise out of it. Methods to decrease the digital divide in the country, developing a well-defined and easily accessible system, and proper training of the bureaucracy to effectively cope with the digitisation becomes the need of the hour. The increased efficiency borne out of these novel methods might be critical in breaking out of India's enormous case backlog.

#### IV. ENVIRONMENTAL IMPACT

Normal court proceedings and physical hearings during the pre-pandemic times required extensive travel and use of transportation, which resulted in high levels of emissions and left a deep environmental footprint. Several experts mentioned environmental protection as a benefit of virtual hearings versus in-person hearings.<sup>11</sup> For example, traditional arbitration entails a lot

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<sup>8</sup> Jelsyna Chacko, *[Debriefed] Touching 5 crore: What pendency of cases in India looks like*, Bar and Bench, 20 Dec, 2021. Available at: <https://www.barandbench.com/columns/debriefed-touching-5-crores-thats-what-the-pendency-of-cases-looks-like-in-india-statistics>

<sup>9</sup> Shruti Kakkar, *'Virtual Courts Cause Problems To Lawyers In Lower Rung': Advocates Move Supreme Court For Complete Resumption Of Physical Hearing*, Live Law, 24 Nov 2021. Available at: <https://livelaw.in/top-stories/virtual-courts-scba-members-file-application-seeking-complete-resumption-of-supreme-court-physical-hearing-186195>

<sup>10</sup> Rachel Scott, *Supreme Court justice says virtual hearings should continue after COVID*, The Nassau Guardian, January, 2021. Available at: <https://thenassauguardian.com/supreme-court-justice-says-virtual-hearings-should-continue-after-covid/>

<sup>11</sup> *SCC VIRTUAL HEARING SURVEY*, Arbitration Institute of the Stockholm Chamber of Commerce, October

of air travel for arbitrators, parties, and witnesses, which drastically increases the carbon footprint of the proceedings. In fact, according to a study that analyses the environmental impact of arbitration, it was found that formalities surrounding International Arbitration proceedings such as travel and 'site visits' were directly responsible for contributing negatively to the environment.<sup>12</sup>

With sustainability being a prime focus of the world today, virtual court hearings are proving to be a more efficient, affordable and greener alternative to traditional hearings, which incidentally also proved to be high on travel and accommodation costs. Furthermore, the pandemic has altered drastically the way the evidence is collected and transmitted. When earlier, courts were relying on paper documents and records, they have now shifted to electronic documents and copies. It has also been observed that there was a huge surge in the number of e-filings, which were preferred in order to curtail the spread of the virus. If this trend continues, it is likely that the legal system will see a reduction in the use and wastage of papers, which remains to be a major environmental concern in India. Virtual trials thus offer an appropriate substitute for players looking to reduce their overall environmental trail.

## V. A REVAMP OF LEGAL EDUCATION

It is evident that the pandemic has severely affected the educational landscape of the country. Imparting legal education has taken new forms that were hitherto unknown to humanity. Law schools and universities closed down, and the campus learning process was shifted online to ensure continuity in education. Now more than ever, professors as well as students have learned to embrace and manoeuvre through technology than before. In fact, the pace of technological change accelerated right in front of our eyes during the pandemic.<sup>13</sup> Even though there were myriad hardships that the students had to face, such as missing out on physical moot courts, confusion regarding payment of fees, etc., there remain to be a few advantages and opportunities that the legal landscape of the country can make use of.

One of the major advantages of the virtual Medium remains to be the use of recorded classes and lectures. Since there are no physical boundaries in the online realm, it has been reported to be immensely helpful and efficient for students wishing to revisit class recordings and review

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2020, Available at: [https://sccinstitute.com/media/1773182/scc-rapport\\_virtual\\_hearing-2.pdf](https://sccinstitute.com/media/1773182/scc-rapport_virtual_hearing-2.pdf)

<sup>12</sup> Mohit Mahla and Kabir A.N. Duggal (Columbia Law School), *When the Answer is Becoming the Question: Impact of Arbitrations on the Environment*, Kluwer Arbitration Blog, November 29, 2020, Available at: <http://arbitrationblog.kluwerarbitration.com/2020/11/29/when-the-answer-is-becoming-the-question-impact-of-arbitrations-on-the-environment/>

<sup>13</sup> **Leonard Baynes**, *Predictions on Pandemic's Lasting Impact on Legal Education*, Law 360, June 2, 2021, Available at: <https://www.law360.com/articles/1389276/predictions-on-pandemic-s-lasting-impact-on-legal-education>

lectures multiple times. Law professors feel that shifting to the online mode not only means more focus on hypotheticals and real-world examples during class hours, but it also means a more level playing field in class wherein nobody can hide or be missed out, thus, making the class more interactive and interesting.<sup>14</sup> In addition to this, students and faculty appreciate the convenience of not having to spend considerable amounts of money having to travel to-and-from institutions every day.

Nonetheless, Covid-19 has encouraged researchers to reconsider the traditional educational model. In the future, digital education is expected to be merged with traditional schooling. This will promote inclusive education in India by promoting learning across even the farthest corners of the country. Furthermore, it will allow instructors to create personalised learning solutions for each student.

Finally, it is a known fact that India suffers from unequal access to the internet and online services that proved to be imperative to navigate through this new normal. Apart from looking at this unfortunate situation as a problem, moving forward, the pandemic-induced shift towards online learning must be seen as a gargantuan opportunity to bring down the digital divide in India. This is a chance for a concerted effort on everybody's part to work in tandem with the new changes and strive to achieve the common goal of imparting good education equally.

## VI. ECONOMIC ADVANTAGE

In a way, economic consideration can be thought of as an extension of access to justice. The expenses of litigation are an important part of judicial review because they raise fundamental problems such as access to justice and the ability to hold public officials accountable for abuse of power. Navigating through the Indian legal system is already extremely expensive in itself, with high costs of litigation consisting of court fees, process fees and advocates' fees, among others. The costly nature of litigation is proving counteractive to the needs of the parties, which are then forced to abandon their claims and defences. Added to this were costs related to transport, overhead charges etc.

However, with Covid restructuring the system, parties will no longer be forced to pay transportation charges, which will only serve to be economically advantageous, especially for self-represented and low-income litigants, in the long run as "Physically going to court costs money, takes time, creates fear and confusion, and presents both real and perceived risks."<sup>15</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> Sabaha, *Judicial Process in India*, Legal Services India, available at: <http://www.legalservicesindia.com/article/464/Judicial-Process-in-India.html>

Even courts and institutions such as law firms and other organisations are finding out that they can shift their operations online and reduce their physical footprint and save more on real estate, maintenance, and overhead costs.<sup>16</sup>

Notably, experts have also demanded that video proceedings be combined with enhanced services (especially for self-represented litigants), such as internet portals and stand-alone kiosks to facilitate access to court services, simplified court forms, and real-time court assistance services over the internet and phone.<sup>17</sup> Furthermore, according to a report by the Self-Represented Litigation Network, videoconferencing technology can save the time and costs involved in travelling, transportation, childcare, and other day-to-day costs that people sustain when they attend court.<sup>18</sup>

Incidentally, the success of legal institutions in being able to handle the virtual Medium also serves to answer professor Susskind's question of whether the court is a service or a place.<sup>19</sup> Improvement in this field will only help to reinforce the fact that a firm's physical place isn't as important to the services that it provides.

## VII. TECHNOLOGICAL GROWTH

There have been talks among the populace that the justice system has failed to keep pace with evolving technology.<sup>20</sup> Lawyers even today view technology as something of a threat to their livelihood, and as a result, there was a slowdown in the rate of admission of new technology in the legal sector. However, that has changed almost overnight, with the pandemic. Forced to accept technology to survive, legal institutions throughout India and around the world have resorted extensively to technology to carry out their day-to-day functions. In short, the pandemic has "reframed legal services" and "technology has become a lifeline".<sup>21</sup>

This situation presents an opportunity for India to work in furtherance of improving and restructuring the legal landscape's adoption and use of new technology. Allowing innovations to enter the legal field could help correct certain fundamental shortcomings inherent in our

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<sup>16</sup> Maximilian A. Bulinski & J.J. Prescott, Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency, 21 MICH. J. RACE & L. 205, 227, 2016.

<sup>17</sup> National Centre for State Courts, Call to Action, 37-38., [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0024/17367/call-to-action.pdf](https://www.ncsc.org/__data/assets/pdf_file/0024/17367/call-to-action.pdf)

<sup>18</sup> John Greacen, *Remote Appearances of Parties, Attorneys, and Witnesses*, *Self-Represented Litigation Network*, 3-4, 2017.

<sup>19</sup> *Supra* note 3.

<sup>20</sup> Robert Ambrogi, The Innovation Gap (Part 1): Why The Justice System Has Failed To Keep Pace With Technology, ABOVE THE LAW, January 22, 2018, Available at: <https://abovethelaw.com/2018/01/the-innovation-gap-part-1-why-the-justice-system-has-failed-to-keep-pace-with-technology/>

<sup>21</sup>By Joanna Goodman, Lockdown or pitstop?, The Law Society Gazette, 20th April 2020. Available at: <https://www.lawgazette.co.uk/analysis/lockdown-or-pitstop/5103901.article>

system and can help to increase the agility and flexibility that the traditional system of courts and services lacked.

### **VIII. A WAY FORWARD**

The pandemic has indeed affected each and every one of us. The Indian legal system, too, has undergone and continues to undergo myriad hardships and encumbrances. With the government and other stakeholders trying their level best to ease the burden of the pandemic on these institutions, there still exists a plethora of players bearing the brunt of the crisis, such as law students who are yet to experience physical reopening of universities, lawyers without internet access, among hundreds of others. Furthermore, with the pandemic being as unpredictable as it is, it is becoming impossible to say for how long these restrictions will be put in place. To survive, it becomes imperative, therefore, to view these challenges as opportunities to be harnessed in order to revamp and restructure the Indian legal landscape. Viewing these obstacles as openings to improve factors such as infrastructure, environment, education, and accessibility, as well as to correct intrinsic defects such as case backlogs and technological aversion, has come to be seen as the right thing to do.

The Judiciary in India has cautiously adopted new technology, and justice dispensation shifting online has become a welcome change. Meanwhile, as courts design policies for remote proceedings, they should interact with a diverse group of stakeholders, including public defenders and prosecutors, and take the viewpoints of different players such as legal service providers, community leaders, and legal experts. With that being said, as the coronavirus continues to wreak havoc around the world, it is our duty as responsible citizens to recognise and encash upon the rare opportunities that it presents.

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