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Rise in Hate Crime and Access to Justice in Covid-19 Pandemic

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ABSTRACT

The world is confronting unforeseeable and extraordinary circumstances that grow due to the impact of Covid-19. The global economy is adversely affected, and the legal fraternity and justice system is no other exception. The law and justice are the fountainheads through which people can uphold their rights, seek recompense for their grievances and protect those at risk of being overlooked. Access to justice cannot be denied to any woman during this time of the global pandemic. The researchers focus on the significant threats of domestic violence to women's lives associated with the Covid-19. With the outbreak tremendously growing in all spheres, the worldwide disruption such as racism, caste-based violence and classism set to continue. The number of incidents against China and ethnic Asians has been reported worldwide, and various racist comments and crimes against Asian Communities recorded since the pandemic started. In India, Northeast inhabitants are facing racism through denouncing remarks and physical assaults. They are culpable of reverse racism in their states. India has faced many incidents of caste-based violence during this outbreak. The coronavirus does not discriminate; it affects all. The ability to withstand the distress varies between the rich and the poor. Many migrants and homeless are ceased from purchasing rations and entering protection camps. India is a country that cannot battle against the coronavirus crisis without considering its class and caste divisions. Indian epidemic strategies are coloured with class bias as self-quarantine, and social distancing cannot be feasible for a person sharing a tiny room with ten people in a slum.

In the current pandemic crises and the declining political systems, the role of the judiciary as a justice delivery mechanism of a country becomes more vital; it is the duty of every judge to be readily available to serve fellow citizens, especially in matters involving the protection of their basic fundamental rights.

Keywords: *violence, racism, classism, outbreak, pandemic, judiciary.*

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I. INTRODUCTION

The complete lockdown circumstances in the country avert the physical conduct of court proceedings—the non-conduction of proceedings generating numerous problems in the justice delivery system.

The world is facing an extremely unpredictable situation as it persistently fighting against this global pandemic. The economy is declining, and the legal fraternity and judicial system seem to be no different due to the absence of a digital framework.

The pandemic has changed all ways of life, forcing the biggest lockdown in history with billions of people advised to stay indoors. The spreading of coronavirus diseases creates health risks and gives opportunity to the dark element of society due to social distancing and misinformation. There are a number of fake apps and websites that are generating fears in the mind of general public by spreading fake news in this predicament. The publisher of this kind of hoaxes is taking advantage of the circumstance where people are trapped inside their home and trying to get every possible information about Covid 19 to stay safe and away from infected people.

The broadening of alleged information is much more dangerous than the spreading of infection as it started materialising the colour of communal violence based on racism, harassment, classism or caste. These are creating catastrophic events which are demolishing our societal structure.

II. HATE CRIMES

Hate crime has always been prevalent in India. It is motivated by a biased mindset of a person concerning race, colour, religion, sexual orientation, disability, class or ancestry of an individual or group of persons of a particular social class. This type of illicit activity is generally done to generate fear in the minds of masses belong to the group of common characteristics. In the modern era, the meaning of hate crime has evolved; it is beyond discrimination, lynching, and assaults. It now includes speech that is defamatory and induces violence among the public. Provisions to contain and prevent hate speech are mentioned in the Indian Penal Code under sections 153A, 153B, 295A, 298, 505(1) and 505(2), stating that word, spoken or written, that promote disharmony, hatred or insult based on religion, ethnicity, culture, language, region, caste, community, race, etc. is punishable under the law. Similarly, the Representation of People Act, Information Technology Act, Unlawful Activities (Prevention) Act also contain provisions concerning hate speech.

Hate crime is considered heinous than any other criminal offences as it is directly ambushed on a person's rights entrusted to him; therefore, it not only causing injuries to a particular person and upsurging a social turmoil.³ The increasing rate of hate crimes in society resulted in an alarming situation. The victims of such hate crime reached the country's Apex court and demanded their plight be addressed. The Apex court, while addressing a plea, held that

*“the law and justice are the fountainheads through which people can uphold their rights, seek recompense for their grievances and protect those who are at risk of being overlooked. Access to justice cannot be denied to any person.”*⁴

However, unsurprisingly change was microscopic, and according to the report of Hate Crime Watch of April 2019, 282 hate crime cases with 100 deaths were reported. Muslims were in the majority with 57% cases, followed by Christian with 15% cases and then Hindus with 13% cases.

Maharashtra Police has registered around 400 cyber-crime cases associated with Covid 19. According to the report, out of 400, 234 cases are linked to hate speeches and attempt to create a communal angle to the spread of disease.⁵ A large chunk of these cases originated from Tablighi Jamaat meet in Delhi, which became the hotspot of infections, accusations, and counter-accusations. These cases are communal in nature, creating hatred among people of different communities. The circulation of these type of messages on the online platform is a potential forerunner to serious law and order issues.

The north-easterners in India are continuously insulted by neighbours and landlords who are well aware of their nationality. The Covid-19 pandemic has generated fear and disgust in the minds of northeast inhabitants of the country.

III. DOMESTIC VIOLENCE

Domestic violence involves a pattern of psychological, physical, sexual, financial and emotional abuse. Acts of assault, threats, humiliation, and intimidation are also considered acts of violence.

Many women faced verbal and physical abuse on regular days, but the lockdown has

³ Pratyush Pandey, *Hate crimes: Their nature and laws connected with them*, LAW TIMES JOURNAL (Mar 12, 2020), <http://lawtimesjournal.in/hate-crimes-their-nature-and-laws-connected-with-them/>.

⁴ Anita Kushwaha v. Pushap Sudan (2016)

⁵ Sushant Kulkarni, *In Maharashtra, 400 cyber crime cases filed on Covid issues, most on hate speech & communal accusations*, THE INDIAN EXPRESS (May 20, 2020 11:16:08 PM), <https://indianexpress.com/article/cities/pune/in-maharashtra-400-cyber-crime-cases-filed-on-covid-issues-most-on-hate-speech-communal-accusations-6419881/>>

augmented domestic violence cases all over India.⁶ Numerous domestic violence cases have been reported since the imposition of lockdown; the complaints are from both rural and urban areas. The number of complaints received during this period was much higher than what was reported during the pre-lockdown months.

The recent data released by National Legal Service Authority states that Uttarakhand reported the highest domestic violence cases in the last two months of lockdown, followed by Haryana and National Capital Delhi. Some surprising numbers were disclosed in the report, which brought up that 144 cases of domestic violence were registered in Uttarakhand. From Haryana, the number of cases was 79 and a total of 69 cases recorded from Delhi.

The situation is not trounced only in India, but women worldwide who were in an abusive relationship have also come to a standstill. The same violence is repeated and perpetrated frequently and regularly during the lockdown. Various domestic violence helplines and organizations worldwide are constantly working to deal with this global issue.

All India Council of Human Rights, Liberties and Social Justice (AICHLS)⁷ filed a petition in Delhi High Court, mentioned the extensive threats to women's safety during the lockdown period. They included statistics as evidence of this threat in the petition.

In response to the petition, the Delhi High Court issued notices to the respondents and advised them to deliberate upon their additional measures to convey domestic violence matters.

In India, the National Commission for Women (NCW)⁸ has declared an emergency alert about the rise in domestic violence cases since the national lockdown began. In addition to violation of human rights, victims of domestic violence can counter various physical and mental health difficulties such as the risk of chronic disease, depression, sexual disorders, PTSD (post-traumatic stress disorder) and substance abuse. Lack of social support systems is one of the causes of increasing domestic violence cases during these times.

Generally, the victim could avoid a violent situation by staying elsewhere, but that option is not available right now due to lockdown. The term 'lockdown' itself gives a sense of being trapped. This type of harassment is unavoidable, and the perpetrator is 100 percent responsible.

⁶ *Domestic violence cases in India on the rise during lockdown, says report*, TIMES OF INDIA (May 18, 2020, 14:00 IST) <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/domestic-violence-cases-in-india-on-the-rise-during-lockdown-says-report/articleshow/75801752.cms>

⁷ All India Council of Human Rights, Liberties and Social Justice (AICHLS) v. Union of India http://164.100.69.66/jupload/dhc/DNP/judgement/26-04-2020/DNP24042020CW29732020_171719.pdf

⁸ Aviva Parvez Damania, *Lockdown and rise in domestic violence: How to tackle situation if locked with an abuser*, THE INDIAN EXPRESS (May 17, 2020 11:05:51 AM), <https://indianexpress.com/article/lifestyle/life-style/lockdown-rise-of-domestic-violence-how-to-tackle-situation-if-locked-with-abuser-national-commission-for-women-6406268/>

Victims should not try to protect the actions of the perpetrators, as there are none. Acceptance of such actions may lead to a vicious cycle of abuse.

IV. RACISM

Under the Constitution of India, the term “race” has been considered in Article 15, Article 16 and Article 29, which talks about prohibition of discrimination on the ground physically visible traits like skin colour, facial features, etc. On a similar note, Section 153A of the Indian Penal Code also refers to promoting enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc. Any failure can lead to criminalization and penalization of racial offences in India.

The northeast inhabitants of India are facing severe racism during the lockdown. There has been rise in racist attacks and discrimination against northeast citizens living in different states of India in the wake of the Covid-19 pandemic. People addressed them as ‘Go Corona’ and blame them for eating animals and spreading the virus. People treat Northeast inhabitants differently. They are often confused with the Chinese and have to prove their Indian identity.

Several people in the Northeast are working in unorganised sectors such as spas, salons, restaurants, and hotels are struggling to make their ends meet. They seek help from the State government with basic grocery supplies and a means to defer paying their rents. There are many instances of attacks on doctors and medical staff and incidents of misbehaviour with the students from the northeast.⁹ The Honourable Prime Minister Mr. Narendra Modi condemns such incidents and underlined that such cases need to be dealt with firmly.

The incident of a Manipur woman who had been spat on and called Corona by a middle-aged man sparked outrage for racism. A group of students were allegedly attacked and beaten by their neighbours, who demanded to the left the premises.

The North-eastern people in India have been subjected to harassment and discrimination in the country as the novel Corona virus originated from Wuhan, China, before becoming a global crisis. Since then, there has been much hateful abuse against the Chinese people and people in India resembling Northeast citizens with the citizens of China and abusing them for spreading this deadly virus.

⁹ Gertrude Lamare, *Covid-19: Even in a pandemic, mainland India is still racist and intolerant towards North Easterners*, SCROLL.IN (Apr 24, 2020 , 06:30 AM), <https://scroll.in/article/959873/covid-19-even-in-a-pandemic-mainland-india-is-still-racist-and-intolerant-towards-north-easterners>>

V. CLASSISM

Classism can be defined as “prejudice or discrimination based on class.”

To fight this global pandemic, the government of India is enforcing the lockdowns, encouraging social distancing, self-quarantine and hand hygiene. These measures are essential but driven by class biasedness. India should improvise its epidemic management strategies by contemplating the marginalised communities. As to how could one expect self-quarantine, social distancing and prioritising hand sanitisers from a person who shares a small shack with ten people in a slum and struggles for one meal a day. Low-income groups whose job involves cooking, cleaning, grooming, delivering food, groceries and more are most unsafe to Covid-19.

The lockdowns prohibit public gatherings, put restrictions on travel and encourage work from home. These activities force the labour class to lose wages. The family of daily wage earners have been forced into poverty, children into malnutrition and workers into unemployment. Words and phrases used for battling against Covid-19 should not leave a legacy whose reversal will require a similar struggle by the Dalit leaders a long time ago. Social distancing denotes classism and casteism. This should be replaced by physical distancing.¹⁰

The coronavirus does not discriminate; it affects all. The ability to withstand the distress varies between the rich and the poor. Many migrants and homeless are ceased from purchasing rations and entering protection camps. India is a country that cannot battle against the coronavirus crisis without considering its class and caste divisions. Our culture always discriminated or ill-treated people from different backgrounds on various parameters. This global pandemic acts as an efficient reason for failing healthcare systems, governmental non-action plans, and our inability to care about marginalised communities and create class division.

Social distancing while having a source of income should include all the employees, whether they are employees at a large corporation or within the house. They should be given paid leaves to take care of themselves and their family and be treated with dignity.

Leprosy and Malaria provide a glaring example of class discrimination inherent in colonial public health services. The administrative authorities had insufficient framework needed to separate all the lepers but targeted only poor lepers who were identified as the most vulnerable vectors of the disease. During the spread of Malarial fever, the government suggested strict

¹⁰ Anup Agarawal and Yogesh jain, *India cannot fight coronavirus without taking into account its class and caste divisions*, SCROLL.IN (Mar 24, 2020, 06:30 AM), <https://scroll.in/article/956980/india-cannot-fight-coronavirus-without-taking-into-account-its-class-and-caste-divisions>

quarantine to only illiterate third-class passengers boarding from the affected countries to India, whereas strict quarantine did not apply to the elite class returning India from affected countries.

VI. CASTE-BASED VIOLENCE

Communal structures shaped by repressive structural forces of classism, casteism, communalism, elitism and patriarchy render a specific section vulnerable. Viruses and bacteria do not discriminate, but society does. With the hike in rates of coronavirus cases in India, the instances of caste-based violence are upsurged. It is, however, true that the exceptional nature of the crisis affects the global economy, society, and public health have been reasons enough to take harsh counteractive standards by the government. However, the biased measures taken by the Indian government are highly insensitive.

There are many incidents all over India amidst lockdown where people from low caste says that they are subjected to caste slurs and humiliation. Caste-based violence has been increased under the covid 19 lockdown, just as in the case of domestic violence. “At some time in the history of the Hindus, the priestly class socially detached itself from the rest of the body of people and through a closed-door policy became a caste by itself.”¹¹

Caste is a virus that has the virtue of self-duplication. The Brahmin communities commence the practice of social distancing, which led to a caste pandemic. Now, in the case of novel corona virus, the order of things evolving is slightly different.¹²

The migrant workers, sanitation workers, manual scavengers and garbage pickers have no protective gear other than the masks to keep themselves safe. These people are not only unduly affected, but their social conditions are also stand in the way of their potential to retrieve.

VII. ACCESS TO JUSTICE AMIDST COVID 19

The global economy is adversely affected, and the legal fraternity and justice system is no other exception. The law and justice are the fountainheads through which people can uphold their rights, seek recompense for their grievances and protect those at risk of being overlooked. Access to justice cannot be denied to any person.

In *Anita Kushwaha v. Pushap Sudan* (2016), the Supreme Court ruled, “Access to justice is and has been recognised as part and parcel of the right to life in India and all civilised societies around the globe.

¹¹ Aviral Anand, *Social Distancing and the Pandemic of Caste*, THE WIRE, (Mar 24 2020), <https://thewire.in/caste/social-distancing-coronavirus-caste-ambedkar>

¹² Anmol Ratan, *COVID-19: How Casteist Is This Pandemic?*, FEMINISM IN INDIA, (Apr 30, 2020), <https://feminisminindia.com/2020/04/30/covid-19-casteist-pandemic/>

In *Swapnil Tripathy* (2018), the Supreme Court, taking cognizance of the advance of technology, issued directions to enable live streaming of proceedings.

In 2005, the central government introduced the National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary and also undertook the e-Courts Mission Mode Project in 2010.

One who knocks on the doors of justice can never deny access to justice, even at the time of lockdown. Extraordinary situations that exist today demand the judiciary's intervention in cases such as the enforcement of the constitutional right of life, health, food, and the right to access lawyers and court; these cases require urgent decisions. Hence, non-interference of the judiciary may result in the denial of justice.

Hence, the severely affected lower class and migrant workers filed a petition in Supreme Court asking for relief. Ironically, when the time for hearing their case came was constantly delayed while other cases that were not of such national importance were given priority. A petition was filed by two social activists, Harsh Mander and Anjali Bharadwaj, working for the stranded migrant workers in different parts of Delhi. The petition was filed on March 31. The case was disposed on April 21 by stating, "We call upon the respondent-Union of India to look into such material and take such steps as it finds fit to resolve the issues raised in the petition".¹³

Likewise, in Guwahati, two activists working for the rights of minorities were arrested by police ramping their fundamental right to be defended by the legal counsel under Article 22 of the constitution. Police officers are practising such arbitrariness. With justice being inaccessible, the principle of law is freely being violated, which is not supposed to be a casualty of the pandemic.¹⁴

However, there are several reports of summary punishment across the country by the police without sanctioning the law. Due to the inaccessibility of justice at the time of enforcement of strict lockdown, the country's citizens become helpless. Several instances are comprehensive of police whimsicality. They vandalised the vegetable carts and tortured the migrant workers and the homeless. This is a clear violation of the principles of the rule of law.

The quality of judgement is of no utility if justice cannot be accessed by people as accessibility is the main element of justice. Hence, the current crisis provides an excellent opportunity to

¹³ Puneet Singh Bindra, *COVID-19: Access to Justice and survival of stakeholders in the legal system*, BAR AND BENCH (April 22, 2020, 10:22 AM) <https://www.barandbench.com/columns/covid-19-access-to-justice-and-survival-of-stakeholders-in-the-legal-system>

¹⁴ Risha Kumari, *COVID-19 Urges Courts in India To Go Online: Pros And Cons Of Court Hearings Via Video Conference*, MONDAQ, (May 21, 2020), <https://www.mondaq.com/india/operational-impacts-and-strategy/938322/covid-19-urges-courts-in-india-to-go-online-pros-and-cons-of-court-hearings-via-video-conference>.

develop our e-courts model. Even at the time of tragedies and people can approach the judicial system in the hope of justice.

VIII. CONCLUSION AND SUGGESTION

The novel coronavirus has put unprecedented challenges to the justice delivery system in India. The pandemic is immediate, real and unfolding before our eyes. However, it is not new. It is something which is accumulating for years. The global pandemic is menacing the countries, industries and people likewise. Nevertheless, that should not be taken as equalising force. Power and privilege determine the social framework in society even in the hard times like Covid-19, and in our country, this framework is quite deeper. In recent times, the chain of hate crime events bears an added dimension, people being spat on, denied entries on groceries shops and expelled from rented houses. There are countless incidents of physical assaults, humiliation and sexual violence which were on hike in Indian states during the lockdown.

The researchers would like to put forward some suggestions:

- India should re-examine its policies of epidemic management. These policies must include underprivileged, marginalised and vulnerable communities of the society.
- Alleviating the medical, economic and socio-political factors of pandemic involves
- massive efforts from both government and citizens of a country. The centre of strategy design should be marginalised sections of a country.
- Considering the societal infrastructure in coordination with the local leaders should be empowered to draft hyperlocal strategies for overcrowded neighbourhoods, homeless shelters and prisons. The epitome adopted by Kerala is a perfect example for all states. It signified inclusive leadership by summoning religious leaders, panchayat members, urban local bodies, members of civil society and non-governmental organisations to established communication in languages preferred by migrants to aware and prevent inflammation of the disease and engaged prisoners in producing masks.
- Access to justice should not be denied even at the time of the epidemic. So, the judiciary and executive should institute ways to serve justice.
- Dalit leaders like B.R. Ambedkar, Periyar, Jyotiba Phule and Kanshi Ram struggled for years to remove the roots of Casteism from India. In this context, one must realise that languages entice cultural and societal values. So, the words and phrases used for battling against Covid-19 should not leave an imprint whose reversal requires the same sort of struggle. Therefore, social distancing should be urgently restored by the word physical distancing as social distances reflect shades of casteism.

Lastly, as we all know, such pandemics have accord and been fought before by human civilization in the past, but the unique thing that they bring along with them is changing and moulding things. Thus, the prejudices and stereotypes must be left behind, and we should welcome the fresh future with more openness and clarity.

IX. REFERENCE

- Pratyush Pandey, *Hate crimes: Their nature and laws connected with them*, LAW TIMES JOURNAL (Mar 12, 2020), <http://lawtimesjournal.in/hate-crimes-their-nature-and-laws-connected-with-them/>.
- Sushant Kulkarni, *In Maharashtra, 400 cyber crime cases filed on Covid issues, most on hate speech & communal accusations*, THE INDIAN EXPRESS (May 20, 2020 11:16:08 PM), <https://indianexpress.com/article/cities/pune/in-maharashtra-400-cyber-crime-cases-filed-on-covid-issues-most-on-hate-speech-communal-accusations-6419881/>
- *Domestic violence cases in India on the rise during lockdown, says report*, TIMES OF INDIA (May 18, 2020, 14:00 IST) <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/domestic-violence-cases-in-india-on-the-rise-during-lockdown-says-report/articleshow/75801752.cms>
- Aviva Parvez Damania, *Lockdown and rise in domestic violence: How to tackle situation if locked with an abuser*, THE INDIAN EXPRESS (May 17, 2020 11:05:51 AM), <https://indianexpress.com/article/lifestyle/life-style/lockdown-rise-of-domestic-violence-how-to-tackle-situation-if-locked-with-abuser-national-commission-for-women-6406268/>
- Gertrude Lamare, *Covid-19: Even in a pandemic, mainland India is still racist and intolerant towards North Easterners*, SCROLL.IN (Apr 24, 2020 , 06:30 AM), <https://scroll.in/article/959873/covid-19-even-in-a-pandemic-mainland-india-is-still-racist-and-intolerant-towards-north-easterners>
- Anup Agarawal and Yogesh jain, *India cannot fight coronavirus without taking into account its class and caste divisions*, SCROLL.IN (Mar 24, 2020, 06:30 AM), <https://scroll.in/article/956980/india-cannot-fight-coronavirus-without-taking-into-account-its-class-and-caste-divisions>
- Aviral Anand, *Social Distancing and the Pandemic of Caste*, THE WIRE, (Mar 24 2020), <https://thewire.in/caste/social-distancing-coronavirus-caste-ambedkar>
- Anmol Ratan, *COVID-19: How Casteist Is This Pandemic?*, FEMINISM IN INDIA, (Apr 30, 2020), <https://feminisminindia.com/2020/04/30/covid-19-casteist-pandemic/>
- Puneet Singh Bindra, *COVID-19: Access to Justice and survival of stakeholders in the legal system*, BAR AND BENCH (April 22, 2020, 10:22 AM) <https://www.barandbench.c>

om/columns/covid-19-access-to-justice-and-survival-of-stakeholders-in-the-legal-system

- Risha Kumari, *COVID-19 Urges Courts in India To Go Online: Pros And Cons Of Court Hearings Via Video Conference*, MONDAQ, (May 21, 2020), <https://www.mondaq.com/india/operational-impacts-and-strategy/938322/covid-19-urges-courts-in-india-to-go-online-pros-and-cons-of-court-hearings-via-video-conference>.
