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ÆQUITAS

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Centre for Poverty &
Access to Justice

Interview

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1. Because of the Covid-19 pandemic, judiciary and technology have come together at a faster pace which led to the changes ranging from online filing to online hearing. While these changes were much needed in the legal fraternity, they create new challenges for the advocates as well as for the parties. What have been these challenges in your opinion?

- Courts are an integral part of our society for the general public and are needed to continue to work to keep up lawfulness. They are an essential apparatus for the smooth functioning of the nation and it is difficult to envision the normal working of a Country without the Courts during any event, even for a short time-frame. Yet, because of COVID-19 Pandemic, the entire Country, including the Judiciary came to a stand-still for a brief period. The arrangement perceived in this regard by the Supreme Court, to restart work in Courts was to digitalize Legal and Judicial Procedures with the help of Online Filing and Online Hearing through the mode of Video Conferencing. Though the hearing of cases through online mode has its own advantages, it poses a few problems and challenges for the Advocates, Courts, as well as for the Parties of which a few include-

1. The e-filing process is complicated and still confusing for the Advocates.
2. Frequent Technical Glitches and Connectivity Issues: In the recent Speed-test Global Index, India ranks 128th for Mobile Broadband and 66th for Fixed Broadband, and that is considering the best internet speed available in a chosen area of some city in the country. The Advocates around the Country face various issues relating to Connectivity, be it relating to the updating of the Display Board or even while presenting an Argument.
3. Lack of required Digital Equipment: It is a fact that, in order to be able to conduct video conferencing smoothly and efficiently, one needs to have sophisticated Digital Equipment like Standalone Microphone, White-Lighting and High-End Laptops or Desktop Computers, and India, being a Developing Country, is not very advanced when it comes to the use of Digital and Electronic Equipment which again poses a problem to Advocates and consequently, to the Parties.
4. Lack of Continuous Supply of Electricity and Internet: Challenges for Lawyers also erupt due to Insufficient Infrastructure and Non-availability of Continuous Supply of Electricity and Internet Connectivity in most areas. Around 50% of the total population of India does not have any access to Internet, and such problems of people without digital access is not addressed.
5. Maintenance of e-records: Due to the sudden onset of the Covid-19 pandemic and the lack of provision for Online handling of Data, the paralegal staff are not well-equipped or trained to effectively handle documents or record evidence and to make them readily accessible to the Litigants, Counsels or even to the Courts.
6. Last but not the least, Lawyers are finding that they need different abilities to be effective in online hearing, as Virtual Courts are very different from ordinary Courts and they need time to get acquainted with the different ways of Online Courts.

However, regardless of the fact that the Virtual Court framework needs improvement in many aspects, Advocates are becoming more aware of a large number of issues with time, and the continuous improvement and advancement in the number of matters being decided each day shows the accomplishment of the Online Filing and Hearing Process throughout the Country of India.

2. Do you think the Court Proceedings during this pandemic have affected the economically or socially disadvantaged people more than the well-placed people? If so, how?

- The Covid-19 Pandemic has significantly affected all facets of the World, and the Judiciary has also not been immune to it. It will not be wrong to state that the Pandemic has affected people in all spheres of the Society negatively, more so, the economically or socially backward classes of those who seek justice at Indian Courts. It is a fact that since the onset of the Pandemic, Indian Courts have been functioning virtually, leading to a number of difficulties for people of the disadvantaged sections, pertaining to their lack of access to Electricity and undisturbed Internet Connections and further to their ignorance in relation to the usage of the Internet Services. When the rich and well-placed sections of the Society are handling these procedures with comparatively greater ease, the socially and economically backward classes, due to the aforesaid issues, are facing great difficulties and losses, both professionally and financially in this respect.

3. In ordinary times as well, do you think that the system followed in courts is complicated for ordinary people to follow, more so for the disadvantaged sections of the society?

- The Law Commission Chairman, in 2017, was quoted saying - ‘The Indian Legal System is so complicated and expensive that poor people are denied access to it’, while further noting that even he would not be able to afford his lawyers. B.S. Chauhan J. (Retd.), was also quoted saying-“The Bail conditions are so complicated that a poor man remains in jail and serves the entire sentence before a Lawyer stands for him, while the rich get bail in ‘advance’”. He also blamed ‘Big Lawyers’ for practicing discrimination in providing equal access to the Legal System to both- the Rich and the Poor.
- Usually, we see how ‘Big Lawyers’ are well capable of defending any kind of criminal, accused of even the gravest of offence, but the said Class of Lawyers demand such exorbitant prices to make an appearance and to represent an accused, that any ordinary person finds it easier to serve the sentence, or to settle for a ‘not-so-established lawyer’, instead of approaching them and affording their exorbitant charges. For any Judicial System to be fruitful, it is vital that the overall population must know the mechanics of the Legal System, which we see hunting the disadvantaged sections more. The whole of general public must be allowed access to know and study the Court Procedures so as to empower them and to protect them from being cheated and from losing their hard-earned money. It is the obligation of the Judiciary too, to ensure that everyone is sufficiently knowledgeable with regard to at least the basic procedures of the Court.

4. For the cases to reach the higher judiciary, what new sets of challenge are faced by the economically or socially disadvantaged sections?

- The whole world is battling against the Covid-19 Pandemic. But in this battle, not everyone is equally equipped. It is the socially or economically disadvantaged sections of the society who are suffering the most during this pandemic. Access to justice, which has been recognised as part and parcel of the right to life, has become unattainable to them in this period. The situation is even worse if or when their cases reach higher judiciary. Judicial proceedings in higher judiciary have always been expensive but with the loss of livelihood during the shutdown the road to justice has become more difficult for the poor and the underprivileged. The use of internet and technology in the administration of justice is an inevitable trend, and the current pandemic has significantly pushed the digitalization process forward. While they are struggling for bare survival, prosecuting judicial proceedings digitally has become next to impossible for them.

5. Apart from the courts, what is the potential of community justice systems on the ground level to help the vulnerable sections of the society? We would like to know the both pros and cons.

- In India, we have Integrated Hierarchical Judicial System where we have to go through the proper channel i.e. from the Lower Judiciary to the Higher Judiciary, which is no doubt expensive, time-taking, besides being complicated and confusing. On the other hand, proceeding in the Community Justice System through Lok-Adalats or through Arbitration and Conciliation Tribunals are inexpensive, speedy and more convenient, as they provide a more pragmatic approach to deal with injustices caused to people at the ground level. Further, people through these forums, get basic legal awareness of their Fundamental and Legal Rights as well as the facilities and support made available to them by the Indian Constitution from the grass-root level The Community

Justice System follows the Principles enshrined under Directive Principles of State Policy, in Part-IV of the Indian Constitution, by delivering justice at the ground level, to both, the rich as well as the poor. However, the quest of speedy trial and the quick resolution of disputes in the Community Justice System at times, leads to the failure of justice, which is even more dangerous. Moreover, as the Community Justice System is entirely based on the principles of Compromise and Settlement, serious grievances caused from grave offences are not qualified to be decided by such Systems.

6.Can you suggest of any changes in the formal justice delivery system that can help make the justice more accessible to the vulnerable sections in India?

- As I have already opined in the preceding paragraphs, our Country follows an Integrated Hierarchical System of Justice Delivery, where one has to go through the proper channel starting from the Lower to the Higher Judiciary which being expensive and time-taking, satisfies the phrase- 'Justice Delayed is Justice Denied' (Magna Carta Movement). In my humble opinion, with the advancement of Digitalization and Technology, first, the lengthy and frustrating procedures of the Courts should be wiped out and limited time should be fixed and provided for completing the proceedings of a case.

Second, the Charges imposed through the process of Consultation with an Advocate, the Filing of the Case, the Representation and the passing of the Final Order by the Court must be made reasonable and affordable so as to ensure that the Vulnerable Sections of the Society to have equal and undenied access to the Justice Delivery System.

Third, the provision of Free Legal Aid under various different statutes must be made accessible to the general population for whom it is designed (i.e. for the Vulnerable and Socially and Economically Backward Sections of the Society), and measures in this regard must be taken by the Judiciary in directing Volunteers to stringently supervise and ensure that such free legal aid reaches people from such Backward Sections of the Society. Coming down to a final conclusion on this topic, the Indian Judicial System needs an immediate and final reformation on a few aspects which amongst others, include:

- An increase in the number of Judges appointed.
- Provision for a Faster Justice Delivery System.
- Improvement in the System of Functioning and Management of Courts.
- Provisions for the faster disposal of Pending Cases. Provision of Access to Judicial System at the ground level.
- Provision of equal facilities for representation to both- the Rich and Advanced, as well as to the Poor and Backward classes of the Society.

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IN THIS ARTICLE

- Right to city in India is a moral right and should be viewed not as legalistic right but as an articulation to consolidate the demand of human rights. It is powerfully suggestive and a very ambivalent concept at the same time, which as an idea and slogan was first proposed by Henri Lefebvre, a French Marxist in his book titled Right to City (1968)
- Partha Chatterjee in his book The Politics of the Governed, published by Columbia Press (2004), marks a distinction between 'political society' and 'civil society', which relates to a large extent the distinction between 'voting poor' and 'tax paying rich'.



THE RIGHT TO CITY AND THE PLIGHT OF URBAN POOR: A REAL CONUNDRUM

Rohini Dahiya

Urbanisation in India over the past seventy years has led to the increasing concentration of urban population and the soaring plight of urban poor. The position of poor in India, especially those living in urban peripheries has always been precarious. As the squatter settlement such as Slums, Jhuggi and Jhopdis, in which they seek shelter is infused with the idea of illegality and always remain at the sufferance of the state and its agencies. This notion stems from the fact that Indian Constitution does not recognise the right to city, which subsumes the right to housing as a fundamental right and further judiciary that proves to be the last and the only resort to claim these rights, have had callous attitude in noting the gap in the concept of urban planning, a well-defined strategy which is distinctly responsible for forced evictions of urban poor. Demolition and forced evictions are done on the pretext of cleaning cities and reducing pollution, these evictions are often tempered by promises of resettlement and relocation to give such disposition a veneer of legitimacy.

Concept of right to the city and urban citizenship

Right to city in India is a moral right and should be viewed not as legalistic right but as an articulation to consolidate the demand of human rights. It is powerfully suggestive and a very ambivalent concept at the same time, which as an idea and slogan was first proposed by Henri Lefebvre, a French Marxist in his book titled Right to City (1968).[1] An American Neo Marxist scholar, David Harvey, rediscovered Lefebvre's work and highlighted the significance of his thought in today's urban scenario.[2] Some scholars even argue that the notion of Right to the City (RTTC) is crucial to poverty reduction in the context of urbanisation.[3] As the realisation of such rights brings about change in the understanding of the nature and hence changes the scale of government interventions to achieve the targets of poverty reduction in the context of urbanisation. [4] As the realisation of such rights brings about change in the understanding of the nature and hence changes the scale of government interventions to achieve the targets of poverty reduction. Perhaps urbanisation in India has been quite less welcoming and exceedingly 'exclusionary' which terms one set of people as illegal and migrants. This deprivation of right to life and livelihood comes exceedingly from the strategic establishment of urban planning and transformation, and the concept of Right to city sought to reclaim this very notion of right to public spaces, public participation in the city, and most importantly right to housing and basic amenities.[5] It highlights the plight to urban poor and draws attention to the loss to livelihood and basic amenities

that is resulted by eviction and demolitions. It is both a collective and individual right that emphasises on right to habitation and housing. In the context of the right to city, the idea of urban citizenship' must necessarily be explained. It should be clearly distinguished from the concept of national citizenship, as it is more about legitimacy than about legality.[6] Large cities in India are an important site to understand the notion of citizenship, as its representation here draws a close link to one's property and income, where unprivileged are always and continuously negotiating to be termed as a citizen. Partha Chatterjee in his book *The Politics of the Governed*, published by Columbia Press (2004), marks a distinction between 'political society' and 'civil society', which relates to a large extent the distinction between 'voting poor' and 'tax paying rich'. He asserts that the peculiar voting pattern of India reveals that there is a positive correlation between poverty and electoral participation, majorly in cities. He further points out that the differentiated access to the state and its resources, highlights the idea that some have rights (and responsibilities for instance tax payers), while others have to negotiate favour. It uncovers the predicament of the poor in urban dwellings who remain chiefly excluded on the account of limited excess to resources and significantly due to unprovable residence. India's urbanisation and the constitutional framework According to the 2011 census, 377million constitute the urban population in India, who account for 31% of India's total population which is expected to go up to 75% by 2021.[6] This raises serious concerns regarding the position of poor and marginalised in the cities. Though right to city and housing are not explicitly reflected in the Indian Constitution. There are various articles of significance for RTTC, including Article 19(1) and Article 21, as in *Chameli Singh vs State of U.P (1995)*, Supreme Court held the 'right to shelter' a component of 'right to life under Article 21 and also, freedom of movement under A-19(1).[7] Also, in a preceding case of '*Olga Tellis&Ors vs Bombay Municipal Corporation and Ors (1985)*' a five judge bench of Supreme court held that right to life also includes right to livelihood, and hence eviction shall take place without notice and hearing the affected.[8] Also, under Article 14 and 15, the Constitution guarantees substantive equality, which oblige the state to take affirmative action in facilitating opportunities for the disadvantaged ones. India has ratified the Universal Declaration of Human Rights (1948) and the International Covenant on Socio and Cultural Rights (1996), The International Covenant on Civil and Political Rights (1996) and various other international instruments relevant to RTTC.[9] Hence, it becomes a contractual responsibility for India to preclude evictions. Rights (1948) and the International Covenant on Socio and Cultural Rights (1996), The International Covenant on Civil and Political Rights (1996) and various other international instruments relevant to RTTC.[10] Hence, it becomes a contractual responsibility for India to preclude evictions.

The conundrum

pertaining to the right to the city and extremity of the urban poor rests on the very idea of urbanisation, which includes urban planning. Planners of urbanisation go about planning without understanding the realities of the extent to urban poverty. Urban poor settlements are often labelled as 'encroachments' which are not invested with any legality, when this illegality in itself is the outcome of the way cities are organised. Judiciary has been a significant contributor to this evolving idea of urban planning and the jurisprudence on shelter and housing for the urban poor. For instance in the recent judgement, a three-judge bench of Supreme court headed by Justice Arun Mishra on August 31, 2020 ordered the removal of 48,000 slum dwelling situated on the railway tracks of Delhi Railway Station within three months. In plea of an affidavit filed by the Railways Supreme court observed that there was predominant presence of slums in vicinity of

140-km along the railway line, and stated the "no court shall grant any stay with respect to the removal of the encroachments." And there should be no political interference against the removal. [11] This judgement by the apex court raises serious concerns as it ignores the principle of natural justice because decision is taken without hearing the affected party. This stands in deep contrast to various preceding judgements by various High Courts and the Supreme Court itself. This order was passed in a long running case of "*M.C Mehta vs Union of India &Ors*", and the court unconvincingly drew connection between pilling of garbage and the presence of slums, ignoring previous judgements on right to livelihood and shelter. As mentioned above that in '*Ogla Tellis & Ors vs Bombay Municipal Corporation & Ors (1985)* Supreme Court held that right to life also includes right to livelihood. No eviction shall take place without notice or hearing those affected. Then, in '*Chameli Singh vs State of U.P (1995)* , Supreme court held right to shelter as a component of right to life under Article 21 and freedom of movement under Article 19(1). Delhi High Court in '*Sudama Singh & Others vs Government of Delhi &Anr (2010)*, that prior any eviction a survey must be conducted and those evicted should have a right to meaningful engagement with relocation plans. The case concerned with demolition of the Shakur Basti on the railway land ,'*Ajay Maken &Ors vs Union of India (2019)* Delhi High Court invoked the idea of 'right to the city' to uphold the housing rights of slum dwellers.[12] Furthermore these judgements though in the first place contradicts to latest judgement, it also evokes an interest to look into the history of PIL, which in the late 90's came to be seen as an instrument for the unrepresented. However, courts tended to view slums as a failure of governments and blamed government for such encroachments. This indeed is an irony on the part of judiciary where in name of protecting interest of poor through PIL's rather draws a tangent to it. Also, this jurisprudence fails to acknowledge the dysfunction between the planned urban transformation and the reality of implementation of those plans. In *Pitampura Sudhar Samiti vs Government of National Capital Territory of Delhi (WP 4215 of 1995)* Supreme Court asserted that "A welfare state is expected to care for its citizens from the cradle to grave. This concept has to change. The role of state in today's world has to be one of a regulator. The state has to create an environment of growth and equal opportunity. Thereafter, it is for each to prosper or perish." [13] This view presented by the court is highly disregarding of the poor and also call into question the fact that what sort of welfare seeks to change the idea that it must take care of its citizens from cradle to grave. Despite the judicial provisions for safe guarding rights of its citizens, the very assertion of rendering urban poor as illegal and migrants deprives them of their basic rights. This is further exacerbated as claiming 'rights through judicial proceedings' in reality is unfeasible and impracticable for the poor who barely struggles to survive.



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ENHANCING ECONOMIC SUPPORT TO TRANS-COMMUNITY DURING COVID-19

Ronita Biswas



It has been six years since transgender was recognised as the 'third gender' in India. After a flurry of legal battles, the Supreme Court in the landmark decision in *National Legal Service Authority v. Union of India*[1] recognised the transgender people's "right to human development and dignity" under Article 21 of the Constitution of India.[2] The Court stressed upon the fact that all the States have a positive obligation to frame various social-welfare legislation for the advancement of the transgender community. Due to centuries of social and economic degradation, there has been very little improvement in the economic condition of the transgender community in India. And this has hit rock bottom with the spread of COVID-19. The global pandemic has pushed the members of the transgender community to the corner and has naturally excluded them. The majority of the members of the transgender community, especially the Hijra community, are engaged in work that brings them in contact with the public. This includes commercial sex work, begging, dancing in bars, and blessing others.[3] This increases their chance of contracting COVID-19. With the imposition of national lockdown, people are reluctant to do anything which brings them in contact with trans-people. Sex workers are losing their clients, and beggars are not getting alms, with reduced festivities and suspension of regular train services which were the primary sources of their income. The real question is what makes the transgender more vulnerable than the rest. The transgender community in India has been systematically facing multiple forms of oppression and discrimination in the fields of healthcare, employment, education, social exclusion, etc. The cumulative effect of all these is that they have been denied their fundamental freedom and human rights i.e. economic, social, political, and cultural rights. Lack of education, exclusion from formal employment sectors, homelessness and landlessness, poor sanitation and health condition, and lack of government opportunities, has forced them to the lowest rung of society.[4] Besides the poverty-stricken situation, reports suggest that most of the Hijra/transgender population are affected by sexually transmitted diseases (SIT) and HIV (Human Immunodeficiency Virus). [5] Many trans-people are undergoing gender transition and sex reassignment surgery (SRS), which requires proper healthcare facilities.[6] The nationwide lockdown has limited their access to proper health care facilities with no means of livelihood. Life seems to have come to a standstill and their very existence is threatened. The pandemic has forced the members of the transgender community to look for alternative means of livelihood. Self-help groups (SHG) have been created to promote employment among them by producing sanitizers and phenyls.[7] Being a part of an SHG also enables them to own a bank account/post office account to directly receive government benefits. However, the government has been irregular in providing rations to these communities. Most members of the transgender community lack proper identity proof such as Aadhar or Ration cards which prevents them from reaping the benefits of government schemes.[8] Members of the civic society and community, in general, have lent a helping hand to the economically disadvantaged citizens, in the form of providing essential commodities like dry rations at subsidized rates, or in some cases at free of cost. However, these benefits might not be able to reach the members of the transgender community who are often ostracized due to the prevailing societal perception. There is a real need for the government to step in and provide support to this vulnerable section of society.

States like Kerala have announced the distribution of relief kits among the transgender community in their state. The West Bengal government has ensured food security to more than 10 crore people under the 'Khadya Sathi' scheme.[9]has limited their access to proper health care facilities with no means of livelihood. Life seems to have come to a standstill and their very existence is threatened. The pandemic has forced the members of the transgender community to look for alternative means of livelihood. Self-help groups (SHG) have been created to promote employment among them by producing sanitizers and phenyls.[10] Being a part of an SHG also enables them to own a bank account/post office account to directly receive government benefits. However, the government has been irregular in providing rations to these communities. Most members of the transgender community lack proper identity proof such as Aadhar or Ration cards which prevents them from reaping the benefits of government schemes.[11] Members of the civic society and community, in general, have lent a helping hand to the economically disadvantaged citizens, in the form of providing essential commodities like dry rations at subsidized rates, or in some cases at free of cost. However, these benefits might not be able to reach the members of the transgender community who are often ostracized due to the prevailing societal perception. There is a real need for the government to step in and provide support to this vulnerable section of society. States like Kerala have announced the distribution of relief kits among the transgender community in their state. The West Bengal government has ensured food security to more than 10 crore people under the 'Khadya Sathi' scheme.[12] The government is distributing free rations to poor people (without any demand for proper identity documents) with the help of 'Khadya Sathi' coupons. The Patna High Court has directed the State government to extend financial support of Rs. 1500/-, which should be further increased, without any identity proof. So far no Central scheme has been launched to protect the trans-community. Recently, there was a glimmer of hope for the community, to survive the economic impact of the COVID-19 induced lockdown[iv] when the Finance Minister launched a special "stimulus package" of Rs. 1.70 lakh crore for the poor under the Pradhan Mantri Garib Kalyan Yojna.[13] The scheme provided specific measures for vulnerable groups such as farmers, building and construction workers, senior citizens, poor widows, and the disabled but left out a targeted response for the 490,000 members (Census 2011) of the transgender community.[14] With no proper legislation to protect the rights of the transgender community, it is doubtful whether the judiciary will be able to single-handedly defend this vulnerable community. There is a lack of political will on the part of the State or Central government to help this community overcome the crippling effects of the pandemic.[15] The position of the recent Transgender Persons (Protection of Rights) Act, 2019 is still debatable. Most of the transgender community members are against it due to its obvious flaws.[16] The government has sought suggestions from members of the community and public to amend the said legislation. However, the ongoing pandemic has delayed the process. In the meantime, the Central government can come up with an interim provision to protect this community. This can primarily include direct cash transfers through the channel of Direct Benefit Transfer (DBT). The government must ensure cash transfers are directly made to the community members without any requirement of identity proof. Further, nationalised banks can be directed to mandatorily register members of the trans community to facilitate such cash transfers. The government must make sure the lack of documentation does not hinder the community from accessing essential services.



IN THIS ARTICLE

- National Legal Service Authority v. Union of India recognised the transgender people's "right to human development and dignity" under Article 21 of the Constitution of India The Court stressed upon the fact that all the States have a positive obligation to frame various social-welfare legislation for the advancement of the transgender community.

In order to increase food security among the members of the trans-community, the government must regularly distribute dry rations and other additional food requirements through Public Distribution System (PDS) and the Integrated Child Development Services (ICDS Anganwadi) Programme.[17] Governments of different states have come up with ways of reducing food insecurity among the poor, but with no special provision to uplift the transgender community. Many members of the community face the wrath of social stigma and are not able to access these facilities. The government must introduce new ideas to increase public awareness and make sure they are not treated as untouchables. In Chennai, the government has started a first of its kind campaign where the local corporation is hiring transgender people as brand ambassador for social awareness and welfare programs.[18] They play a major part in creating public awareness about the ongoing pandemic, distributing face masks, conducting fever surveillance, and related tasks. This helps them to earn around Rs. 15,000 per month (besides being provided two meals during the day) under the 100-day employment scheme. Apart from earning a regular income, trans-people regain their respect and place in society through such measures. Life has always been difficult for the trans-community in India. And the global pandemic has made things worse for them. While the government is responsible for giving them adequate protection under the law, society must also change its mindset and embrace different gender identities and expressions. This will encourage their overall social and cultural participation and reduce their misery in these distressful times.

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SANITATION WORKERS AND COVID-19: THE STORY OF DISREGARD AND DEJECTION

Gouri



The Indian society has always condemned the sanitation workers so as to receive the worst ends of it. Despite them being indispensable for health services, no one has paid heed to their welfare for centuries; the deplorable slur of caste system in the country being the major antecedent for the same. Despite the raving cries of human rights, the past few months in light of the pandemic have been an eye opener, on the vulnerable and unsafe conditions that the society is still willing to put them through. A recent study conducted by AIIMS among the COVID-19 positive healthcare workers says that the largest population of affected parties was sanitation workers and hospital attendees (35.3%).[1]

GOVERNMENT LEGISLATIONS, ORDERS AND A REALITY CHECK

The Ministry of Home Affairs in their order dated 24th March, 2020[2] mandated various services and establishments, including government offices to be closed. But, with exceptions of police forces, public utilities, hospitals, and related establishments, essential services like sanitation amongst many. Even though, the order brought in sanitation workers under the definition of essential workers, the consequent events showcased that this did not mean the slightest elevation to their status but a rather perceptible decline. From cleaning garbage, even from the containment zones to emptying septic tanks filled with bio-hazards, in addition to handling discarded medical wastes, the sanitation workers had to perform their duties without the bare minimum of protective gears that includes sanitizers and masks. [3] The Constitution of India protects the rights of sanitation workers through various articles such as Article 17 (Abolition of untouchability), Article 21(Right to life and dignity), and Article 42 (Just and humane conditions of work). Additionally, The Supreme Court in Consumer Education and Research Centre v. UOI[4], has upheld articles like Article 39 (to ensure that health of workers is not abused), Article 43 (securing a decent standard of living for workers), and Article 21 (in terms of right to health) to mean reasonable safety of all workers. Subsequently, the legislature also vouched to guarantee these protections to the sanitation workers through the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. Even though the Act predominantly deals with the protection of manual scavengers, it also includes some protective regulations for sewer workers, such as the sections mandating medical equipment like masks, goggles, Personal Protective Equipment (PPE) while cleaning sewers and tanks.[5] Despite the above safeguarding provisions, the substandard conditions of work for these people continued; to the extent that even during the pandemic, the sanitary workers who are in constant contact with medical wastes and workers in extreme risk areas like the containment zones were only accredited to be under 'moderate risk' by the government Guideline on the Rational Use of Personal Protective Equipment [6] which recommended just the usage of N-95 masks and gloves for them. The guideline is ablatant contradiction to the World Health Organization's (WHO) guidance for sanitation workers in healthcare or otherwise[7], that mandated the sanitation workers to follow standard operating procedures that include wearing appropriate PPE, heavy-duty gloves, boots, medical mask, goggles, and a face shield. Even though, this was brought up before the Supreme Court in Harnam Singh v. Union of India and

IN THIS ARTICLE

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For a country with five million sanitation workers[8], the Indian government is taking their welfare too less a priority. Majority of these workers live in slums with their family and have an income below poverty line. Many lack proper sanitation facilities including a toilet and use public toilets or urinals and at times even resort to open defecation. So,even if a small portion of them get infected and are not efficiently quarantined, they pose a huge threat in infecting (oral and fecal) a lot of people. Even the precautionary government guidelines, such as Guidelines for Hygiene and Sanitation in Densely Populated Areas during COVID-19 Pandemic[9]which ensures safe access to sanitation and hygiene in low-income settlements and Guidelines for Safe Management of Water Supply and Sanitation Services during COVID- 19 Crisis[10] which seem like a mere imitation of international guidelines, is futile due to its ineffectiveness in the local context; as even with guidelines these people lack the awareness, facilities or adequate income to afford the facilities for these rules to be followed. Further, due to improper safety equipments they are left unprotected to lethal environments to a great degree. In view of the same, the Central Government included sanitation workers in the 50lakh insurance schemes to healthcare workers together with doctors, nurses and ; paramedics, working in government or private hospitals but excludes the sanitation workers on streets. With the number of infections sky rocketing and the need for people on the ground rising day by day, the government needs to lose their half-hearted pasquinades in the name “protecting sanitation workers” and actually resort to the measures that would bring in an actual change to the circumstances. In the case otherwise, the foreseeable future fighting the pandemic is going to be precarious for India.



IN THIS ARTICLE

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- the legislature also vouched to guarantee these protections to the sanitation workers through the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.
- Guideline for Handling, Treatment and Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of COVID-19 Patients mandates the segregation of general solid waste from biomedical waste and to employ separate sanitation workers for each of these

CONCLUSION

Even when the entire world celebrates their health workers, the sanitation workers in India cannot seem to escape from the age-old nightmare they are trapped in. The caste based informal nature of the work leaves a lot of sanitation workers outside documentation and hence, identification. To ameliorate their situation, it is imperative that the government initiates major reforms to the existing practices. Firstly, a panchayat based survey to identify all sanitation workers, including part-time workers; secondly, to mandate strict use of and provide Personal Protective Equipment to all the workers who are in direct or indirect contact with the infection. Thirdly, strict implementation of laws relating to clean water and sanitation should be made so that at no point the safety of the workers be vulnerable.

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VIRTUAL COURTS AND JUSTICE DELIVERY IN TIMES OF COVID-19 PANDEMIC: CHALLENGES AND THE WAY FORWARD

Arunavand Agrata Das

In the month of April, a total of 82,725 cases were filed in courts across the nation among which around 35,169 cases were disposed off.[1] Around 3.23 crore cases are still pending in the subordinate courts in the country. This includes 90 lakh civil cases and 2.32 crore criminal cases of the tot figure. However, in the higher courts, there are about 48.16 lakh cases pending which includes both civil and criminal cases.[2] The quality of adjudication in a courtroom is of little utility to potential litigants if they cannot access it because accessibility to the courtroom functioning is a core purpose of justice. During the lockdown all courts have been operating in a highly restricted manner including the Apex Court, the High Courts and the District Court. The new normal of social distancing during this pandemic has changed the entire scenario of the court system. The process of appointment of the judges has also been impacted due to COVID-19 and the nationwide lockdown. Court proceeding in many tribunals came to a complete halt at the past two years, the Central bench of National Green Tribunal (NGT) has been attending to matters through video conferencing technologies, but it ceased to function due to the nationwide lockdown. With the staying of the work of NGT on key government funded projects, the public has to pay high price for this stalemate.[3] The burden of increased cost for these projects would eventually be passed on to the common citizens of the country as the proceedings now are on hold.

CHALLENGES AND LIMITATIONS

Electronic court or e-court can be defined as a matter of law which are adjudicated upon in the presence of qualified judges and accompanied with a well-developed technical infrastructure to hold the legal process. The entire thought of virtual court lays on the ground of eliminating the presence of litigants in the court room, and initiating court proceedings on an online platform coupled with a well-equipped infrastructure to support it. It basically aims at making the legal process and the court system must easier and more user friendly where the litigants can view the status of their case online through various service delivery channels. Also, the litigants can file plaint electronically through e-filing, also can pay the court fees online. E-court somehow differs from the 1990s computerized courts which have been in place since then. Online environment and an ICT enabled infrastructure is a must for the working of e-courts. Courts were given impetus to develop, install and implement decision support system inside the premises of the court and to provide an efficient time bound citizen centric services delivery system and to enhance judicial productivity both qualitatively and quantitatively.[4] However, many glitches and shortcomings lie in the path to achieve the goal starting from e-filing process which is riddled with endless complications. Along with this, cyber security remains a big concern to the functioning of e-court, despite certain steps been taken by the government in this direction to address the problem and formulate a cyber security strategy, the actual implementation of the same is yet to be seen. A huge concern for the e-court procedure is that of depleted infrastructure facilities and non-availability of internet services and electronic connectivity in most of the villages across the country. And even if some places have the availability of internet connections, they lack in speed.[5] To ensure that justice is being served to every section of the society, equally, stable connection of electricity is a necessity along with uninterrupted internet connectivity and computers.



IN THIS ARTICLE

- Dushyant Dave, the President of the Supreme Court Bar Association lent his support to physical and online system in hearing of cases, and he further stated that the technological challenges are hindrance in accessibility to justice.
- “Changes should not be rammed down the throat of lawyers and judges”, said former Supreme Court Judge Madan B Lokur. Managing with the change is somehow important but the changes need to be gradually carried out. They must also be acceptable and accessible to all.

Another challenge is that they do not have well equipped and trained paralegal staff to handle documents and record evidences to make them promptly accessible to the litigants, and also to the court. Other challenges might involve the lack of confidence in the litigants in the process of proximity.[6] The nationwide pandemic lockdown and the new normal of social distancing has drowned a great concern for our judicial system to hold paper less hearing and the need for online and virtual courts.

WHAT LIES AHEAD IN THE VIRTUAL SYSTEM?

The first paperless hearing took place on 1st of June by an entire bench of the Supreme Court of India which can be marked as an historic move.[7] VIDYO app hosted by National Informatics Centre is used along with apps like WhatsApp, ZOOM and WebEx by Court judges for hearings and other procedures.

Dushyant Dave, the President of the Supreme Court Bar Association lent his support to physical and online system in hearing of cases, and he further stated that the technological challenges are hindrance in accessibility to justice. He further added that the judicial system of the country is not adequately equipped to have a digital revolution and the current facilities used by the judges in the Supreme Court are of poor quality. However, given the country's widespread judicial infrastructure with hundreds of court and many of them in remote places where network facilities are yet to be available, the transition to virtual courts is a herculean task for India. Connectivity issues and physical infrastructure issues are not the only limitation of India's unequal technological realities, but many people lack the basic knowledge to use such advance technology and are therefore not comfortable in using such system. Many lawyers have claimed that virtual courts are currently accessible only to a select section of the people. The Bar Council of India says that around 90% of the judges and lawyers across the country are "unaware of the technology" and thus will have a tough time in adjusting with the system. [8] Many lawyer bodies wrote to the Chief Justice of India, Justice SA Bobde for initiating physical court sessions instead of the virtual courts.[9] Last month, the Supreme Court of India issued a Standard Operating Procedure (SOP) for supposed physical hearings of court proceedings which was to commence on an experimental basis. This was at the behest of letters to the Chief Justice by many lawyers' bodies to resume physical hearings.[10] However, this move met with severe opposition on account of rising COVID-19 cases in the NCR region and the country as a whole.[11] Out of 687 cases, in only 6 cases the lawyers from both the sides appeared for a physical hearing. As per the Delhi High Court Registry, 94% of the advocates preferred a virtual hearing of the cases.[12] On 18th September, Justice DY Chandrachud launched 5 e-court projects at the Madras High Court asserting the fact that digital divide should not impede the access to services of the Court for litigants or for the citizens.[13]

He further opined that such practices will help incorporate an improved culture of Information Communication Technology (ICT) governance.[14] E-service centers in the Madras High Court have been functioning since the beginning of May, 2020. Concluding his speech, Justice DY Chandrachud emphasized that lawyers must be trained in their vernacular languages to ensure that the fruit of e-services can reach to every section of the society.[15] In a court proceeding, many crucial elements were taken into notice and argued upon, such as demeanor and facial expressions of the accused person, dressing etiquette which can be overshadowed by glitches in video streaming and like this one there are many other fears that could undermine a fair trial.[16] There could also be problem in cross questioning during the trials if the witnesses are testified from their comfort zones which can be their homes. Cross examination also depends on the kind of demeanor which the witness displays in the court and when the witness is being questioned in the court. Online applications such as VIDYO app and the use of WhatsApp, Google Meet and Zoom conferencing tools have raised serious questions on sovereignty and security when these apps are used for judicial proceedings. Critical public function and adjudication cannot rely on third party proprietary software which threatens the security of the whole process.[17] The NIC (National Informatics Centre) should be given an impetus to create a platform which can include features like video conferencing and e-filing. The contemporary system of justice is completely out of tune and time with the dynamic democratic procedures and norms. This attempts to please only a certain section of the society. Hence, there is an immediate need to restructure the entire judicial system which is answerable to the needs of a progressive democratic society, a restructure that upholds the value of social inclusivity.

CONCLUSION

The havoc caused due to the COVID-19 pandemic has brought the entire world to a near standstill. But the pandemic has proved to be a blessing in disguise for the judiciary to imagine of a justice delivery system which could function unhindered at all levels during any kind of emergency. The most important and efficient justice modernization need is the function of online courts which may costs billions and a massive sum to commit at a time of austerity, but it will be a major step ahead if it succeeds. This savings can be made by eliminating the costs of running a paper based system using rented premises for courts which looks more like shop and craft workshops than actual courtrooms. "Changes should not be rammed down the throat of lawyers and judges", said former Supreme Court Judge Madan B Lokur.[19] Managing with the change is somehow important but the changes need to be gradually carried out. They must also be acceptable and accessible to all.

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About Centre for Poverty and Access to Justice



सत्ये स्थितो धर्मः



Centre for Poverty &
Access to Justice

The Centre for Poverty and Access to Justice was established in the year 2020 with the aim of minimising and mitigating the obstacles faced by the socially and economically disadvantaged people in accessing justice. The objective of the Centre is to promote community and traditional justice systems that are relatively easily accessible to vulnerable groups, and to make them more compliant with Human Rights. The Centre aims at studying the barriers to access to justice with emphasis on the groups disadvantaged due to inequality in their economic status, discrimination and lack of legal awareness; and overcoming the barriers through State, Civil Society and policy Intervention

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