

COVID-19 and Indian Judicial System

Kavita Ramesh Yadav*

Abstract

Everything is affected by COVID-19 and judicial system is not exception to it. The COVID-19 effect positively as well as negatively on Indian Judicial system. For first time virtual court system implemented for first time in the history of legal system. In the virtual court system, procedure conducted through the video conferencing, e-filing allowed, work from home started, extend the limitation period for file appeal, and use ADR mechanism for given justice to the aggrieved party. The thing is important here to consider that reduction in the crime rate during the period of curfew declared in COVID-19. In the period of curfew, judiciary did not stop the functioning but adopted modified culture to deliver justice. In many cases, judiciary take action either suo motu or upon filing of the PIL in the public interest. Indian judiciary was famous for judicial activism in the world. During pandemic period judiciary issued so many guidelines for proper functioning in different sectors. However, virtual court system faces some difficulties due to no strong cyber security, improper connectivity, lack of infrastructure. There is need of hour to learn lesson from developing country and to make strong cyber security with providing enough infrastructure. The COVID-19 had given you one golden opportunity to modify our judicial system. And make it more suitable to the changing circumstances, and to deliver justice without any delay.

Keywords: Virtual court, video conferencing, covid-19 pandemics, judiciary, legislature, justice

INTRODUCTION

The COVID-19 makes remarkable changes in all aspects of society and Indian judiciary is not an exception for it. To prevent spread of that pandemic, a lot of preventive measures are undertaken, one of them is declaration of 'Janta Curfew' in all over the country. There are different effects of COVID-19 on individual life like retrenchments of the employees, closure of different business, disturbances in supply chain, non-performances of contracts, delay in the implementation, etc. The legal and judicial framework is not an exception for the effect of COVID-19. The functioning of judicial system from district court to Supreme Court affected by that epidemic. The enforcement agencies i.e., police are engaged in the enforcement of social distancing rather than to caught criminals and brought them before the appropriate court. When that curfew started up to now very limited cases of theft, burglary, crime against human body are registered [1]. It is not wrong to say, that period is 'crime free' period. Due to the reason of overcrowding Indian prisons, the convicts of smaller offences are released without lengthy process of parole. Due to this epidemic spread, a lawyer lost their professional work

for certain period of time. Indian judiciary undertaken a few steps to control spread of it like many courts, tribunal partially shut down and only urgent hearing will be carried out in order to avoid human interface. The COVID-19 forced Indian or other international judiciary to develop, adapt new pattern of work culture. The result of this crisis forced technology to substitute manpower and due to it, virtual courts, and video conferencing are only functioning in India. But all these technological aspects require more cyber security due to the threat of hacking. The US adopted

*Author for Correspondence

Kavita Ramesh Yadav
E-mail: kavitayadav98@gmail.com

Assistant Professor, Department of Law, Savitribai Phule
Pune University, Pune, Maharashtra, India

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digital structure for judiciary back to many years. If we look positively, it is clear that such pandemics give us an opportunity to clear backlogs in the judicial and legal system [2].

EFFECTS OF COVID-19 ON INDIAN JUDICIAL SYSTEM

Judiciary for First Time Adopt Virtual Court System

Every aspect has two sides i.e., positive and negative. Like that COVID-19 has positively and negatively affected Indian judicial and legal system. The positive thing was that for first time in the history, judiciary from apex to grass root use digital technology for the performance of judicial functions. This is in short called as 'virtual court' system. The lockdown, and corona virus make open court system crippled and virtual court system evolved out of necessity. During such pandemic condition, judiciary had not stopped their functioning but opened new way to deliver justice by virtue of its modified working, and adopting video conferencing, e-filing of the matters, etc. which is convenient for all i.e., litigant parties, judges, and layers [3]. The virtual courts have 15,596 cases on board and have disposed of 4,300 cases approximately. Over 50,000 advocates represented their cases during this period [1]. The disposal rate of Indian courts is reduced in pandemic period and it is also less than US because US successfully implemented virtual court system. But today's virtual court system criticised by many scholars on the ground of data security and privacy, insufficient connectivity, bandwidth and remote access to files and accountability to the public, and unwanted disruption. While India's Supreme Court normally disposes of as many as 3,500 cases per month, from March 23 to April 24 this year, it only completed 215 cases [4].

Video Conferencing

The COVID-19 is contagious disease and spreads from individual to individual. So to prevent spread of its infection, precaution taken by govt. to declare lockdown in all over the nation in Mar. 2020 according to the provisions of Disaster Management Act, 2005. During the period of lockdown, judiciary performed their function by use of new technology like video conferencing [5]. In the system of video conferencing, counsels are allowed to argue their cases on video calls which are directly connected to the Hon'ble judge presiding over the courtrooms. This system avoids the actual presence of parties, and lawyers. The system of video conferencing in India was criticised by many scholars. Even one petition filed in Supreme Court of India against the video conferencing on the ground that application used for it like Zoom, VidyoMobile are owned by foreign companies which will cause threat to the national security. After it Bombay HC stopped using Zoom for video conferencing and notice with issued guideline regarding use of Vidyo. High court passed an order for appearing in proper uniform while presenting before court through video conferencing [6].

e-filing System

Supreme Court issued Standard Operating Procedure on 15th Apr. 2020 for filing, listening urgent matters and hearing through video conferencing to overcome lockdown. In virtual court system, it adopted e-filing which is one of the contactless filing system as well as it is beneficial to everyone in critical condition of COVID-19 [7].

Judicial Activism

From the every stage of human civilisation, the system of judiciary and justice change itself according to the changing circumstances and changing needs of the society. The constitution of India assigned an active role for the judiciary which causes to evolve judicial activism. Judicial activism is a dynamic process of judicial outlook in the changing society while considering the dynamic and pragmatic societal factors [8]. During the time of COVID-19, judiciary plays active role by doing its job in new way. Judiciary plays very important role in the adjudication of legal disputes and maintains justice either civil or criminal in the society. The constitution of India has given everyone the right to knock the door of courts for justice. In fact, judge without judicial activism can perhaps be described as a flower without colour and fragrance and vehicle without fuel and wheels which are unavoidably must for any court to be known as court of justice, substantial justice and speedy justice. The present

writing focuses on judicial activism during tough time caused by COVID-19. The judiciary started their working from the video conferencing. In that system, counsels are allowed to argue through the video calls which is directly connected to the Hon'ble judges. This is the unique evolution of the judicial system come under the ambit of the judicial activism [9].

During the critical condition, judiciary deliver justice to the needed people without any delay as well as passed many orders and judgement for effective implementation of the lockdown and not to cause inconvenience to the citizens. In lockdown or after lockdown, many rumours are spread in the society which disturbed the people and their normal functioning [10]. Even though India does not have any specific laws to deal with the menace of fake news but regarding it some provisions found in the IPC, IT Act, 2000, Disaster Management Act, 2005 [2]. The DMA, 2005 even prescribes punishment for the govt. servant who denied performing their duties entrusted with them during the pandemic period. To prevent it, court passed an order to register FIR against the person spreading fake news or rumours of COVID-19 on social media. The Maharashtra police have registered 51 cases against various individuals in the state regarding spread of fake news relating to the pandemic of COVID-19. So, everyone take precaution before forwarding, circulating, uploading any message on social media. The enforcement agencies are vigilant on virtual platform for to protect people and society [11].

In the tough period caused by COVID-19, judiciary takes suo motu action or action taken on filing of PIL on the ground of considering different social issues. The important orders passed by court that, no person to be allowed in public premises without mask [12].

When issue of right to life is raised, court always takes protective and forwarding steps in the social interest. The best example of it was that court passed an order that private labs allowed to test COVID-19 but free of cost for those who are unable to pay fees of it. In addition to this court issued direction regarding protection of doctors and health workers. In this respect, Justice M.R. Shah, one of the judges on the Bench led by Justice Ashok Bhushan, stated that "They are being compulsorily quarantined after duty and you are taking advantage and taking away their leave?" [13].

The Arushi Jain case created precedent that, the quarantine period of doctors, health workers will be definitely treated as 'on duty' period and not leave and they should not incur any loss or delay in the payment due to that.

The another interesting decision given by the Kolkata High Court that hospitals cannot refuse admission to COVID-19 patients if hospitals has available beds.

COVID-19 created unpredictable extraordinary situation for everyone. Judiciary handled that situation by undertaking different measures and in the social interest passed different orders. Supreme Court of India for first time extended the period of limitation for filing suit, appeal, or application which is not statutorily permitted.

Work from Home

The positive aspect of COVID-19 on India is that for first time, work model of 'work from home' was implemented in India. Mostly employees in ICT sector during lockdown are allowed to work from home. School teachers conduct their lectures by online system. The concept of work from home has lot of benefits like to reduce road traffic which leads to reduce environmental pollution, reduce cost saving as well as it gives psychological refreshment to the employers, and employees [17].

Rajasthan High Court issued an order that all lawyers should appear for cases in proper uniform even during hearing through video conferencing. In this case, Justice Sanjive P. Sharma expressed deep anger on advocate Ravindra Paliwal who appeared for petitioner. He was present before the court through the video conferencing wearing baniyan. Due to this reason, i.e., work from home, some

forget their professional etiquette and standard forced Rajasthan HC to issue order for lawyers to wear proper uniform while present before the court through the video conferencing and finally court adjourn that matter for certain period of time.

Extension of Limitation Period in Preferring Appeal before Apex Courts

Limitation Act, 1963 defines 'Period of limitation' under Section 2 (j). It means a period of limitation prescribed for any suit, appeal or application under the schedule to the Limitation Act, which covers a range of claims and their timelines [18].

The three judge bench of Supreme Court in exercise of powers conferred to them by Art.142 read along with the Art.141 of the Constitution of India extended the period of filing appeals, suits, petition and all other proceeding before courts or tribunals. In short, court extended period of limitation till further notice. The decision taken by court after considering suo motu cognizance of present situation. And court considers difficulty faced by the lawyers, and clients for physical presence before the court. That decision of court is applicable to all subordinate courts and tribunals in India [19].

Increased Limitation for Declaration of Insolvency from One Lakh to One Crore

Central govt. in exercising of powers are conferred by Sec.4 of the Insolvency and Bankruptcy code has increased one lakh rupees for declaration of insolvency to one crore rupees. The decision taken by the central govt. by considering present situation in the country. This decision helps to those companies who are not able to pay off his debt in present situation. Regarding that matter, petition was filed in the SC of India. Petitioner in this case sought direction for govt. and RBI for 'appropriately consider moratorium period for certain period for to enable borrowers who are suffering from COVID-19'. And petitioner argue that RBI circular regarding extend moratorium of three months was incomplete due to the reason of it does not provide interest relaxation for that period [20].

RBI issued circular which allows debtor to postpone payment of debt on the ground of Majeure. The term Majeure, it is French term which legally means act of god, an act of event for which party cannot held accountable. It is included in the Contract Acts of different country.

Matters Relating to the Employers and Employees

Such epidemics create a fear in the mind of both employees and employers about continuity of business and employment. All business enterprises large, small, micro are affected by the COVID-19. All sectors like production, distributions, export, import, etc. are effected by COVID-19. The result of COVID-19 is that some enterprises closing down their business or some cut wages of employees as well as retrenchment of workers. Millions of workers come on road and started marching on foot, they travel by cycle, rickshaw, and walk on railway track. To avoid lockdown's unnecessary consequences, there is a need for govt. to make a plan and give adequate notice of lockdown which enables worker to plan for travel to reach their home with minimum suffer. COVID-19 lead migration of many workers to their native place. All this lead to create unemployment which leads to social unrest. To come out of these crises, there is need for govt. to start local development works like-roads, sanitation, irrigation works otherwise many of them died due to frustration, hunger, or unemployment. There is need to amend the nation's Labour Law to help workers in such national crises in the present and future period [15].

On considering the suffering of migrant workers by suo motu or on base of publication in media and on the basis of PIL filed in the court, apex court issued order to immediately provide food, cloth, shelter to the migrant workers. Further court directed to the centre and state govt. to send all migrant workers to their native places within 15 days and also directed the authorities to adjudicate all cases relating to the migrant workers on their rights violation.

Use of ADR Mechanism

COVID-19 spreads from individual to individual. It spread in nearly 200 countries. It adversely affects life of human being. It creates social, economical, political, and judicial challenges before nation. COVID-19 causes to increase pendency of cases before the judiciary. The use of ADR mechanism is the best solution to reduce the burden or workload on judiciary during pandemic period. So countries around the world are taking steps to provide justice in such pandemic crisis judiciary adopt ADR mechanism. ADR mechanism includes according to CPC Sec.89 (1)–(2) arbitration, mediation, conciliation, judicial settlement, settlement through Lok Adalat. ADR is informal process, provides quick and interim solution to the disputant parties. In order to maintain social distancing in such tough pandemic crisis, it is highly essential to adopt Online Dispute Resolution (ODR) method in India or in other country. ODR is also known as centre of ADR excellence. The ODR means marriage of ADR with the new technology. Under ODR mechanism, communication made via emails, video conferencing, what's up messages, send message, etc. It means that it avoids physical presence for face to face communication [21]. In other words, in ODR, dispute resolved online but such disputes either raised in online transaction or offline transaction. There are different kinds of ODR:

1. Blind negotiation
2. Online negotiation
3. Online negotiation-cum-mediation
4. Document/e-mail arbitration for disputes arising from e-commerce transaction
5. Online arbitration through video-conferencing
6. Online public opinion
7. Peer Jury and panel jury

The COVID-19 forced judiciary to adopt virtual court system. In order to make access of justice more convenient, Indian judiciary with the Department of Justice undertakes certain measures like adopt ODR mechanism in India.

ODR mechanism means provide quick justice along with remedy against individual's emotional, physical and financial suffering. A remarkable judgement given by Delhi High Court [3], it is legal to refer criminal compoundable case under Sec.138 of Negotiable Instrument Act to mediation. In this case, court observed that there is a need to use modern technology for speedily disposal of cases which is helpful to reduce burden on the court. In short, we conclude that ODR helps to overcome jurisdictional issues, eliminate geographical barriers, automate administrative tasks, improve productivity of professionals, promote eco-friendly processes, and finally, deliver a quick, economical and effective solution to disputes.

To Amend or Review Existing Laws

COVID-19 forced to think about either to change or amendment existing laws according to the changing time and circumstances. It includes Indian Contract Act, Indian Evidence Act, Intellectual Property laws, Labour Laws, Indian Disaster Management Act, and Indian Epidemics Act, etc. [14].

Increase in Number of PIL

During COVID-19 and post COVID-19 has create many social, legal, political crisis which will affect different aspects of human being. Mostly vulnerable, disadvantaged class of the society, poor's their life is tremendously affected by COVID-19. Women, children are further in risk of violence. In order to protect life and liberty, security a lot of PIL filed in apex court. PIL is concept which liberalise the term of 'locus standi' which enable court to reach disadvantaged section of the society and to provide justice to them. A PIL filed in SC of India for to seek a ban on use of Zoom application on the ground of threat to privacy of individual and security of nation. The present petition is filed under Art.32 of the Constitution and it is concerned with the Right to Privacy under Art.21 of the Indian constitution [16]. Some of the cases filed in public interest are discussed below in brief:

Shashank Deo Sudhi versus. Union of India

Facts: PIL was filed by petitioner in the SC. The petitioner challenged the decision of the government regarding fixation of COVID-19 testing costs in private labs at INR 4500 and he sought free testing of COVID-19, in both government and private laboratories.

Held: Court passed an order with new clarification to its initial order. Court allowed private lab to make testing of COVID-19 free of cost for economically weaker sections of the society who were unable to afford the payment of testing fee fixed at Rs. 4500.

Dr. Arushi Jian versus UOI

Through this PIL petitioner wants to focus a light on the issue of salaries or other emoluments not paid timely to the doctors, and hospital staff and other one is, accommodation in quarantine period. In this case, PIL was filed by petitioner in the SC for the purpose of intervention of SC to pass urgently directions regarding hospital staff, doctors, nursing staff, asha workers, and ambulance operators, they are real front-line warriors and continuously working without rest. This lead to risk to their life as well as to their family members. As well as court directed to the states to pay full salaries to the doctors and health workers in quarantine period which is not treated as leave but it is period of duty.

Jerryl Banait versus Union of India on 8 April, 2020

Petitioner filed PIL for the purpose to implement the guidelines issued by WHO and Ministry of Health and Family Welfare. And he wants that court pass a direction regarding availability of appropriate 'personal protective equipments' (PPE) including medical masks, gloves, goggles, face shield, respirators, shoe cover, head covers and gowns to all health workers who are treating patients suffering from COVID-19 in India.

In this case, court passed order that respondent as per guideline issued by Ministry of Health ensures the availability of PPE for all hospital staffs and directed them to provide police security to them. Govt. take necessary action against those who obstruct or commit any offence in respect to performance of duties by doctors.

Further court gives direction for govt. to encourage domestic production required for medical profession like masks, caps, gloves, etc.

CONCLUSION

The COVID-19 pandemic creates unpredictable challenges to every sector of the nation. And judiciary of nation is not an exception to it. It positively and negatively impacts the legal and judicial system of India. It forced court to adopt virtual court system, e-filing, ADR with ODR, forced to amend the certain laws according to the changing circumstances. For the apex court like Supreme Court and High Court had sufficient infrastructure to conduct or adopt virtual system, but inferior courts would not have sufficient infrastructure to conduct proceeding online for adjudicating matter. So here there is a need to improve technological set-up which will enable courts to deliver justice fast in such unpredictable crisis. There is a need to learn lesson from that unbelievable situation to change the present model like USA, UK, and other developing countries are adopting virtual court system with strong cyber security. Before some decades they adopt digital technology in the judicial system as well as they amend their laws according to the changing conditions. The best example of it (Digital Millennium Copyright Act) DMCA law of America.

REFERENCES

1. COVID-19 and Indian Courts, King Stubb & Kasiva, www.lexology.com.
2. www.thehindu.com;
3. www.inidalegalive.com; Courting a virtual world,
4. Harsh Chugh Vs. UOI. In this case Petitioner file petition against video conferencing. He sought a ban on Zoom app for both official & personal purposes on the ground of internet safety & argues

- that application of that app cause threat to the privacy of individual as well as threat to national security. So Zoom app is not safe and it violating provisions of Information Technology Act, 2000. Three judge bench of SC headed by Honb'le Chief Justice of India S. A. Bobade issued a notice to central govt. & Zoom seeking their written response.
5. Black's Law decitionary define judicial activism means, "judicial philosophy which motivate judges to depart from traditional precedents in favour of progressive & new social policies".
 6. Ramit Mehta, Saurabh Maheshwari; Indian Courts during Covid: focusing judicial activism in trying times of pandemic Int J Law. 2020; 6(3): 330–332, ISSN: 2455-2194, Impact factor: RJIF 5.12, Available from: www.lawjournals.org.
 7. State of Gujarat Vs. Patel Karsanbhai Madhabhai (1997) 2 GLR 1224.
 8. Indian Penal Code, 1860 prescribe punishment for publishing, circulating rumour which cause fear in public under Sec.505(1) of IPC.
 9. Information Technology Act, 2000 prescribe punishment for use of any communicating device for the purpose of cheats by personating under Sec.66 D of the IT Act, 2000.
 10. The Sec.54 of the Disaster Management Act, 2005 prescribe punishment for those who circulate a false alarm or warning as to disaster or its severity or magnitude, leading to panic.
 11. ETTelecom.com. 2021. Covid-19 contact tracing and privacy concerns: Here's what experts think - ET Telecom. [online] Available at: <<https://telecom.economictimes.indiatimes.com/news/covid-19-contact-tracing-technology-and-privacy-concerns/75119433>> [Accessed 13 April 2020].
 12. Lalram S/o Shyojiram Vs. State of Rajasthan; S.B. Criminal Miscellaneous Bail Application No. 758/2020.
 13. Art.142 of Indian constitution gives power to SC of India to pass any such order or decree necessary for doing justice.
 14. Art.141states that decision of supreme court would be binding upon other courts in India.
 15. The Hon'ble Court vide Order dated 23.03.2020 has directed as under: *"it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings"*.
 16. Apex Court in the Suo Motu Writ Petition (Civil) No(S). 3/2020 held that *period of limitation in all such proceedings, irrespective of the limitation prescribed under General or Special Laws, whether condonable or not shall stand extended w.e.f. March 15, 2020 till further order/s are made by the Hon'ble Supreme Court in this regard. It was also declared that the said order is a binding order within the meaning of Article 141 on all courts/ tribunals and authorities.*
 17. www.investopedia.com.
 18. Alakh Alok Srivastava Vs. UOI (writ petition no.468/2020). In this case PIL was filed by an advocate practicing in SC seeking immediate action for protection of rights of migrant workers as well as seeking direction for state to provide them essential necessity like-food, cloth, shelter, medical facility etc.
 19. S.K. Verma, & Raman Mittal; Legal Dimension of Cyberspace, page no.314.
 20. www.vakilno1.com, Legal Article- Important judgement on cheque bounce. Case Name: M/s Meters and Instruments Private Limited & Anr. v. Kanchan Mehta. In this case two judge bench made certain observation that, *Use of modern technology for speedy disposal of cases– The Court took into consideration use of modern technologies for enabling speedy disposal of cases under Section 138 of NI Act and noted that use of modern technology needs to be considered not only for paperless Courts but also to reduce overcrowding of Courts. There appears to be need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. Traffic challans may perhaps be one such category.*
 21. Alternative conflict resolution mechanism amidst COVID-19, KS Legal & Associates –Sonam Chandwani; www.lexology.com